

# **RETIREMENT SYSTEM - DEFINED BENEFIT PLANS -**

## **PROCEDURES AND GUIDELINES FOR DETERMINING QUALIFIED STATUS OF A QUALIFIED APPROVED DOMESTIC RELATIONS ORDER (QDRO)**

### **I. INTRODUCTION**

You most likely are reading this because you are a State of CT employee undergoing a divorce, the spouse of a State of CT employee contemplating a divorce or you are an attorney representing a State of CT employee or employee's spouse in a divorce. If you are an employee or the spouse of an employee, the following is not intended as legal advice and should not replace individual consultation with an attorney. If you have specific questions regarding the division of a State Employees Retirement System (SERS) pension pursuant or with regard to a divorce, you should contact an attorney.

Here are some points to consider with regard to the division of a SERS pension due to divorce:

1. The State Employees Retirement System (SERS) is a governmental retirement plan and, as such, is exempt under United States Code, Title 29, Section 1003 from the federal requirements of the Employee Retirement Income Security Act (ERISA) and the Retirement Equity Act. Unlike ERISA plans, this means that in the absence of an appropriate court order, a Member may be able to take certain action with regard to the Member's retirement benefits *without* any notice or consent required from anyone, including the Member's spouse.
2. As noted, SERS, as a governmental plan is not governed by ERISA. However, the State Employees Retirement Act does provide for the division of pension benefits when is so ordered by a court of competent jurisdiction in recognition of marital asserts or child support obligations, providing such order is not contrary to SERS plan provisions.
3. Attachment of SERS retirement benefits for purposes of equitable distribution must be accomplished through the terms of a Qualified Approved Domestic Relations Order ("QDRO"). There are several unique prerequisites that must be met before SERS can accept any QDRO or amendment to an accepted QDRO. In no case can the QDRO alter SERS' benefit structure.

The State Employees' Retirement Act (Chapter 66) provides a myriad of benefit options to SERS members. All QDROs must utilize the benefit structure established by the General Assembly through this legislation. Because these benefits have been statutorily established, any substantive changes to the benefit structure are outside the jurisdiction of the Courts. For example, a court cannot order a lump sum payment from SERS because there is no statutory provision for such a payment.

4. The division of benefits must be clear and unambiguous within the four corners of the QDRO. SERS will not accept any QDRO that requires reference to property settlement agreements, trust documents, etc. to calculate benefit formulas or determine payout information. SERS has no power to compel a party's compliance with the terms of a QDRO. Therefore, SERS cannot accept a QDRO containing terms contingent on an event other than the Member's death or retirement, such as the sale of the marital home or the purchase of life insurance.
5. Unlike ERISA plans, the rights of the Member's spouse are entirely derived from the Member's rights. To that end, the Member's spouse may not elect beneficiaries, choose benefits, and so forth.
6. A SERS QDRO is a deemed qualified domestic relations order for purposes of Sec. 52-321a and for federal tax purposes.

It is important for the Court, attorneys, and the parties to become familiar with some important SERS plan provisions before executing a pension division order. Copies of the summary plan descriptions for each of the State of CT's three plans are available on the Connecticut State Comptroller website at [www.osc.state.ct.us/empret](http://www.osc.state.ct.us/empret).

## II. WHAT YOU NEED TO KNOW BEFORE PROCEEDING

SERS is a *defined benefit* plan which is a rare thing these days. It is not a 401(k) or IRA which has easily discernible balances and can be "divided" into accounts. It is strongly suggested that before you read any further you find out the "Tier" to which the Member belongs. There are five (5) Tier or Plan designations in SERS:

- (1) Tier I
- (2) Tier II
- (3) Tier IIA, and
- (4) Tier III
- (5) Hazardous Duty (which could be Tier I, II, IIA or III)

If the employee is a Member of ARP (alternate retirement plan) do not read any further – you need to contact the State's Third Party Administrator with regard to a pension division order.

Why is it important to know the Tier? Because the benefits are different as are the plan provisions. For example, there are no Member contributions for Tier II, the benefit formula for a Tier I Member is different than for Tier II, IIA, III. A hazardous duty Member can retire at full retirement at any age with twenty (20) years service. Once you find out what Tier the Member belongs to - it is strongly suggested that you:

- (a) Read the summary plan description (SPD) of that plan (please click on the link below):
  - [Connecticut State Employees Retirement System Tier I Summary Plan Description](#)
  - [Connecticut State Employees Retirement System Tier II Summary Plan Description](#)

- [Connecticut State Employees Retirement System Tier IIA Summary Plan Description](#)
- [Connecticut State Employees Retirement System Tier III Summary Plan Description](#)

(b) “Click” through our Workshops (<http://www.osc.state.ct.us/empret/indxwork.htm>)

Within the Tiers themselves there are three areas you need to look at with care:

Tier I, Plan B reduction: If the employee is a Tier I, Plan B Member, his or her SERS benefit is *reduced* upon attainment of the age he or she would be entitled to full social security or upon receipt of a social security disability award whichever occurs earlier.

Hazardous Duty: There are a limited number of positions within State employment that have been designated as “hazardous duty” positions. A link is attached to all positions that have been designated as “hazardous duty”. [Hazardous Duty Appendix](#). There are special retirement rules that relate to these positions – for example – a hazardous duty Member may retire with a full retirement benefit at any age if they have 20 years of service. However – this retirement benefit stops during any time the retiree receives CGS Section 5-142(a) disability payments.

Disability Retirement: If the Member is receiving or will receive a disability retirement pension based on an injury or disability that occurred during the marriage (i.e. the Member receives a disability retirement prior to the divorce), the disability portion of the pension may be attachable through a QDRO. However, if the Member receives a disability retirement pension *after* the marriage has ended, the disability portion of the pension may not be attachable. Disability retirement benefit options are more limited than regular retirement benefits and therefore different issues must be taken into consideration in drafting a QDRO dividing a disability retirement pension. Please read the section on Disability Retirement contained in these guidelines very carefully.

SERS is a defined benefit plan and as such it is funded by the State on an actuarial basis: there are no State contributions individually assigned to an employee's account. State contributions are never available to the employee or to an Alternate Payee for distribution. Separate accounts are not maintained for members and Alternate Payees.

Retirement benefits are determined through use of a complicated formula (check the Summary Plan Description) based upon Tier, years of service and final average pay. Even if a Member has contributed to his or her retirement benefit, SERS benefits are determined by a formula and that Member's contributions (if any) do not necessarily represent the full “value” of a Member's interest. Each Member is given a “Personal Statement of Benefits” in the fall of every year. It is suggested that the parties obtain a copy of this Statement from the Member prior to drafting the Order. While the amounts in the Statement are estimates, the Statement does provide important basic information about the Member's retirement benefits including Tier membership, payment options and contribution information.

If you are the Member – or you know the Member’s years of service, final average pay and other basic information - an interactive benefit estimate calculator is available on the OSC website.

- [Tier I Retirement Counseling Workshop](#)
- [Tier I Benefits Estimator](#)
- [Tier II/IIA Retirement Counseling Workshop](#)
- [Tier II/IIA Benefits Estimator](#)
- [Hazardous Duty Retirement Counseling Workshop](#)
- [Hazardous Duty Benefits Estimator](#)

Members, their spouses and attorneys can use the calculator to create benefit estimates based on information they have and can experiment with different figures.

Lastly – when reading these guidelines keep in mind that a QDRO contains two distinct pension distribution periods: (1) the *distribution period* (taking place while the Member is alive) and (2) the *survivor option* (which takes place upon the death of the Member).

For example, assume the QDRO states that the Alternate Payee will receive 30% of the Member’s monthly benefit and directs the Member to choose Option B - 50% survivor option with the Alternate Payee as the contingent annuitant. Assume when the Member retires, his or her monthly benefit is \$1,474.

With regard to the *distribution period* (that is, the time while the Member is alive) the Alternate Payee will be paid \$442.20 per month until either the earlier of the death of the Member or the death of the Alternate Payee which ends the obligation. The death of the Member ends the *distribution period* even if the Alternate Payee is still alive because the benefit morphs into payment under the *survivor option* – the amount paid to the contingent annuitant (which is not automatically the Alternate Payee) upon the death of the Member. Thus, when the Member dies, the amount being paid under the distribution period ends and the survivor benefit begins. Unless the QDRO lists the Alternate Payee as a contingent annuitant, the amount of \$442.20 ends at the death of the member.

In the above hypothetical, the Member selected the Alternate Payee as a 50% contingent annuitant. As a 50% contingent annuitant, the Alternate Payee will receive \$737.00 per month *after* the Member dies as the 50% contingent annuitant: yes – more than what he or she received when the Member was alive. This amount, the \$737.00 will continue until the death of the Alternate Payee and end at that time.

### **III. ROLE OF RETIREMENT SERVICES DIVISION**

The role of the Retirement Services Division (“Division”) in accepting QDROs is simply to determine whether the QDRO satisfies the requirements under the Internal Revenue Code and under the Plan.

The Division’s acceptance of the QDRO relates solely to whether the technical requirements for QDROs were satisfied. Whether or not the QDRO is at a stage where the parties should agree to its terms or whether the terms are “fair” to the parties is not a determination for the Division to

make. The Division cannot be involved in any negotiations between the parties as to the division of retirement plan benefits.

The Division cannot and will not give legal or actuarial advice with regard to the terms of the QDRO or the value of the benefit being discussed. The Division will not offer advice on the desirability of a particular option or plan of distribution and does not provide legal advice or representation to persons seeking a QDRO.

**Important Note:** Prior to the receipt of a QDRO, the Division will provide information about a retirement benefit to: (a) the Member; (b) the Member's attorney as long as the request is made on the attorney's letterhead and in the letter the attorney clearly states s/he represents the Member; and (3) in response to a validly issued subpoena or a request under the Freedom of Information Act (most income and payroll information is available under the FOIA). In sum:

1. The Division does not write QDROs. The Division reviews certified QDROS to determine if they can be administered.
2. At the Member's request, the Division will provide the Member's employee benefit statement. The Division cannot release benefit estimates to anyone other than the Member without the Member's written authorization. For your convenience, monthly pension estimator calculators are on the OSC website.

The actuarial factors used to formulate estimates are available on the OSC website at <http://www.osc.state.ct.us/rbsd/reports/2009Optionfactortbl02.pdf>. Additionally, an interactive retirement benefit estimator also available on the OSC website at <http://www.osc.state.ct.us/empret/indxwork.htm>. Members can use the calculator to create benefit estimates based on their account data or experiment with different figures.

3. The drafter needs to draw up the DRO in accordance with the steps outlined in these guidelines. SERS is not governed by ERISA: language relating to ERISA plans should not be used. It goes without saying, both the Member and the Alternate Payee should agree on its provisions before it is drafted.
4. When the DRO is drafted ideally have both parties sign it and get it certified by the Court.
5. When the court approval is obtained, one of the parties must obtain a **court certified copy** of the court order. This copy should be sent, preferably by certified mail, to the Division for acceptance as a QDRO.
6. When the Division accepts the QDRO, it sends out a notice to the parties. Both the Member and the Alternate Payee (and their attorneys) should keep a copy of both the QDRO and the notice.
7. Plan accordingly: due to the budget situation it can take 4-6 months for the QDRO acceptance by the Division.

8. Three things to keep in mind:

- A QDRO should not be confused with an alimony award; it is viewed more of a marital asset as opposed to spousal support.
- A QDRO is not always necessary in situations of divorce. If the parties can agree to divide other marital property equitably, then SERS benefits may not need to be divided, and there may not be a need for a QDRO.
- A SERS QDRO must be a final judgment, decree, or order that has been accepted by SERS and certified by the court. A QDRO must meet both criteria before it will be enforced by SERS.

#### IV. GLOSSARY OF COMMON TERMS AND DEFINITIONS

For purposes of applying the procedures outlined herein, the following definitions shall be controlling, unless otherwise stated herein:

- **Accrued Benefit**

An accrued benefit is the amount of retirement benefit that a Member has earned as of a particular date in a defined benefit plan. It is calculated according to the benefit formula in the plan. When preparing a QDRO for SERS, the drafter should make sure the accrued benefit is determined as of a certain date (date of divorce, date of retirement, etc), whether it will include future contingent benefits (e.g. cost of living adjustments) and the effect of retirement payment options upon the accrued benefit.

- **Alternate Payee**

An Alternate Payee (“Alternate Payee”) is defined as an individual who is both entitled under Connecticut law and is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to the Member. Basically, this is the party that *receives* the benefit.

- **Benefits (Generally)**

In order to decide how to divide benefits under a QDRO, the drafter first should determine the types of benefits the plan provides. SERS plans provide:

- (1) Retirement benefits that are paid during the Member's life (i.e. *distribution*) and;
- (2) *Survivor* benefits that are paid to contingent annuitants after the Member's death.
- (3) *Refund* of contribution(s) (may not be applicable to all SERS members and then only under limited circumstances).

Generally, a QDRO can assign all or a portion of each of these types of benefits to an Alternate Payee. The drafters of a QDRO should coordinate the assignment of these types of benefits.

- **Benefit Payment Options**

At retirement, the Member will have several payment options available to him or her such as straight life, 50% spouse, 10 year certain, etc. These options are outlined at Conn. Gen. Stat. Sec. 5-165 and are the only payment election options available to the Member. The forms for these options are located on the OSC website and contain information about the specific option factor. Do NOT fill out these forms as part of the QDRO: these forms are only executed in connection with a retirement application.

Option A – 50% to Spouse	<a href="#">PDF format</a>
Option B – 50% or 100% Survivor	<a href="#">PDF format</a>
Option C – 10 or 20 Year Certain	<a href="#">PDF format</a>
Option D – Straight Life Annuity	<a href="#">PDF format</a>

Remember – chose the option with care because it affects the amount of the Member’s monthly payment and it cannot be changed after retirement benefits commence. For example, a straight life annuity generally provides a Member with the highest monthly benefit but all payments stop at the death of the Member while a 50% survivor option may provide a smaller monthly amount but may provide a benefit beyond the Member’s death.

- **Contingent Annuitant**

“Contingent annuitant” is, in essence, the person named by the Member to receive payments following his or her death. A Contingent Annuitant can only be named if the option selected provides for annuity payments to a second person. For example, there can be no “contingent annuitant” if the straight life payment option is chosen. For some options, the Contingent Annuitant must be the spouse or spousal consent must be obtained to name someone other than the spouse.

- **Contributions**

SERS is a defined benefit plan. As such, it is funded by the State on an actuarial basis; there are no State contributions individually assigned to an employee's account. State contributions are never available to the Member or to an Alternate Payee for distribution. However, some employees (depending on the “Tier” to which they belong) may contribute a percentage of their salary to the Plan. For these employees only, in the event of their termination of employment or death prior to retirement, the employee contribution account *may* be available for distribution. Please note that special rules may apply for members who work in positions designated as “hazardous duty.”

- **Defined Benefit Plans**

A defined benefit plan provides fixed or “definitely determinable” benefits, established by formula, set in advance, and by actuarial cost methods. The basic retirement benefits are generally expressed in the form of periodic payments for the Member's life beginning at the Member’s retirement. This stream of periodic payments is generally known as an "annuity."

There are special rules that apply if the Member is married – for example – benefits may be paid in the form of a qualified joint and survivor annuity rather than a straight life annuity and spousal waivers are required in some cases.

- **Disability Retirement**

Active participants who become disabled may be eligible for disability retirement benefits. A special section in these guidelines explains disability retirement in more detail. Please read this extremely important section.

- **Domestic Relations Order (DRO)**

A "domestic relations order" (DRO) is any judgment, decree, or order (including approval of a property settlement agreement) that provides an individual with all or a portion of, the benefits payable under a plan with respect to a Plan Member and is made pursuant to a State domestic relations law or, in the case of State of Connecticut pension and retirement benefits, in accordance with Conn. Stat. Sec. 52-321a.

It is important to note that there can be no DRO until there is a finalized, executed judgment, decree or separation agreement that is approved and signed by the court.

- **Member**

The "Member" is the individual whose benefits under the plan are being divided by the QDRO. The Member's spouse (or former spouse, child, or other dependent) who receives some or all of the Member's benefits with respect to the Member under the terms of the QDRO is the "Alternate Payee." As different rules may apply, it is important to determine whether the Member is an active Member in the plan, a terminated Member, or is retired and is receiving retirement benefits (e.g. on "pay status").

- **Pay Status**

The Member has retired and is actually receiving a monthly retirement benefit. If the Member is in pay status, his benefit payment option cannot be changed. A specific model QDRO has been drafted for members in pay status.

- **Plan Approved Qualified Domestic Relations Order**

A "QDRO" (plan approved domestic relations order) is a court order (DRO) that meets all conditions specified by state law and SERS provisions. A "QDRO" is a court order accepted by SERS establishing the manner in which the retirement benefit of a SERS Member and the Alternate Payee (usually the former spouse) should be divided when the benefit becomes payable.

- **Shared Payment Approach**

The Alternate Payee receives payments under this approach only when the Member receives payments. In splitting the benefit payments, the QDRO may award the Alternate Payee either a

percentage **or** a dollar amount of each of the Member's benefit payments; in either case, the amount awarded cannot exceed the amount of each payment to which the Member is entitled under the plan. The Shared Payment is the only form of benefit allowable under governmental plans.

- **Spouse**

The term spouse herein is intended to mean same sex as well as opposite marriage partner whenever it is appropriate.

- **Summary Plan Description**

The summary plan description is a document that summarizes the rights and benefits of participants and beneficiaries and the obligations of the plan. Copies of the summary plan description for all three Tiers are available on the Connecticut State Comptroller website at [www.osc.state.ct.us/empret](http://www.osc.state.ct.us/empret).

- **Tax Issues**

The federal income tax treatment of retirement benefits is grounded by federal law, and a QDRO cannot designate who will be liable for the taxes owed when retirement benefits are paid. Generally, payments from the Plan to the Alternate Payee pursuant to an order shall be includable in the Alternate Payee's gross taxable income. All parties should consult with their legal and financial advisors about any possible tax issues or consequences as the Division cannot and will not provide any tax advice.

## **V. IMPORTANT: SERS PLAN DIFFERENCES FROM ERISA**

The most important difference in drafting a domestic relations order under SERS is that many IRS provisions relating to the rights of a spouse are not applicable to governmental pension plans. Simply stated, former spouses do not enjoy the same rights or benefits under governmental pension plans as they may under ERISA plans.

The only form of benefit available to an Alternate Payee under a governmental plan is a "shared payment" benefit. Under SERS (and unlike ERISA) the Alternate Payee cannot begin collection of his/her portion of the benefits until the Member actually retires. Also, payments to the Alternate Payee will be made only for the lifetime of the Member unless the Alternate Payee is listed as a contingent annuitant on a benefit payment option.

*Remember*, under SERS:

- The Alternate Payee cannot begin receiving a pension distribution until the Member actually decides to retire. If the Member chooses to work until a later age, the Alternate Payee must wait until s/he retires to begin collecting benefits. Even if the Member could retire at 62, the Member can work until age 70 and the Alternate Payee will not receive any benefit payment or distribution until that time. In sum, an

Alternate Payee receives a pension distribution when the Member collects his or her pension: no sooner – no later.

- The Alternate Payee’s portion of the pension has no survivor benefits. If the Alternate Payee dies prior to the Member’s retirement, or any time after the commencement of benefits, the Alternate Payee’s estate gets nothing. The Alternate Payee does not have the opportunity to designate a beneficiary.
- A distribution to an Alternate Payee at the Member’s “earliest retirement date” or “when first eligible to retire” or a specific age is not possible unless the Member applies for and receives such benefits at his/her “earliest retirement date” or at that age and retires. Any court-awarded portion of a Member’s monthly retirement benefits can only be paid to an Alternate Payee when the Member actually retires and starts to receive a monthly benefit. SERS will not enforce any provision in a QDRO that attempts to “order” or require the Member to retire at a certain age or on a certain date.
- SERS does not and cannot prepare “lump sum” present value calculations of accrued retirement benefits. Parties can stipulate to the value or if they feel it necessary, can obtain a present value calculation from an independent expert such as a qualified certified public accountant or an actuary but their calculations have no effect on any SERS determination.
- SERS provides pre and post retirement death benefits to most but not all of its members.

One last consideration: although state employees are paid on a bi-weekly basis, retirees are paid on a monthly basis in accordance with statute. Drafters and parties should make all calculations and determination on a monthly basis.

## **V. PAYMENT OPTIONS AND METHODS UNDER SERS**

Generally, a QDRO can divide an SERS account between a Member and an alternative payee in three basic ways: a “dollar amount method,” the “straight percentage method” and a “service factor percentage method”

### **1. Dollar Amount Method**

Under this method, SERS is directed to pay a set monthly amount to the Alternate Payee upon the retirement of the Member such as \$300 of the Member's gross monthly payment. It will not change in the future. It does not matter if the Member earns additional service credit or higher income.

This amount will **not** be proportionately increased (annually) by the amount of any COLA received pursuant to statute unless the QDRO clearly and unambiguously states that a COLA will apply.

2. Straight Percentage Method

Under this method, SERS is directed to pay benefits to the Alternate Payee under a formula such as 25% of the gross monthly benefit payable at the date of distribution (that is – at retirement) to the Member. “Date of distribution” means “date of actual retirement” to SERS for purposes of benefit calculation.

If a QDRO awards a *percentage* of the Member's benefit payments (e.g. an award of 25% rather than a set dollar amount) at retirement, then the Alternate Payee generally will automatically receive a share of any future increase in the Member's benefits (e.g. a cost of living adjustment). Conversely with a percentage approach, if the Member takes an early retirement so that his benefit is actuarially reduced, the Alternate Payee's benefit will be correspondingly reduced as well.

3. Service Factor Percentage Method (Hazardous Duty Members Only)

This formula can be used only with regard to hazardous duty employees and only because of the special retirement rules and benefits associated with hazardous duty retirements. A hazardous duty Member can retire with “full” retirement (50% of final average pay) at any age on the first of any month after completing 20 years of credited service. However, if a divorce occurs after 18 years of hazardous duty service, the benefit can only be computed at the ‘regular’ Tier retirement rate which can be substantially less than a hazardous duty retirement benefit. The service factor percentage method may allow the monthly benefit to be computed at the more advantageous hazardous duty retirement rate.

The service factor percentage method is a formula which uses fractions to determine the monthly benefit. A sample of this formula is shown below:

$$\frac{5 \text{ years}}{20 \text{ years}} \quad (\text{years of marriage}) \\ (\text{years Member in plan or credited service}) \times 50\% \quad (\text{share to Alternate Payee})$$

The numerator of this fraction represents the period of time that the employee participated in the pension plan during the marriage (from the Date of Marriage to the Date the Marriage Ended, e.g. 5 years), while the denominator represents the total period of time that the individual participated in the plan at the time of retirement (Total Number of Years of Service, e.g. 20 years). Please note there may be a difference between years a Member in the plan and amount of credited service so be careful in your selection. The fraction is then multiplied against the percentage of the pension awarded to the Alternate Payee (e.g. 50%). In the example above, the Alternate Payee's share would be 12.5% of the payee's monthly benefit at the time of retirement.

If some variation on the service formula is to be used, the drafter is responsible for listing with specificity all required components (e.g. denominator, numerator, beginning and end of the marriage, etc) of the formula. If you know these numbers – do the math and use the result instead of the formula. Be clear as possible!

Please note that because it is a formula extreme care should be taken by the drafter to ensure that the formula gives the desired result. For example, although the formula above appears to give the Alternate Payee half of the benefit, it actually only gives the Alternate Payee 12.5% of the Member's benefit at retirement. Additionally, as the formula may be dependent upon a future event (e.g. total years in plan) the amount of the benefit is uncertain. Using the above formula, if a Member spent an actual 25 years in the plan, the Alternate Payee's share drops to 10% of the payee's monthly benefit.

## VI. SURVIVOR OPTIONS AND RETIREMENT BENEFIT PAYMENT METHODS UNDER SERS

If the Alternate Payee wishes a monthly benefit after the death of the Member, the Alternate Payee must be named by the Member as a contingent annuitant on the Member's retirement payment election. There are six payment options for SERS members at retirement and all except the spousal option can be chosen in a QDRO. Members are urged to consider carefully the payment plans available for their election when drafting a QDRO. **Once a payment plan or option is selected at retirement, the option can NEVER be changed regardless of any subsequent happenings such as a subsequent divorce or death of a contingent annuitant.**

The options are summarized as follows:

1. *Option A – Spousal (Joint and Survivor)*. This provides a reduced monthly benefit to the Member for life. After the Member's death, a percentage of that benefit (50%) will continue for the lifetime of the annuitant. Cannot be chosen as part of a QDRO but if a 50% payment option is desired, the Member can choose Option B: 50% Survivor.
2. *Option B - 50% or 100% Survivor*. This option arranges to continue payments after the Member's death to a contingent annuitant. This contingent annuitant can be any person, including a former spouse. The option provides a reduced monthly benefit to the Member for life. After the Member's death, a percentage of that benefit, either 50% or 100%, whichever is chosen, will continue for the lifetime of the contingent annuitant.
3. *Option C - 10 Year or 20 Year Period Certain*. This option provides a reduced monthly benefit to the Member for his/her lifetime with payments guaranteed from his/her retirement date for 10 or 20 years (whatever is chosen). If the Member should die within 10 years (120 payments) or 20 years (240 payments) from the date of retirement, the remaining payments will be made to the contingent annuitant(s).
4. *Option D - Straight Life Annuity*. This option provides the Member with the highest monthly benefit for his lifetime. However, all payments stop at the Member's death.

The chart below is an illustration as to how a payment option may influence a Member's monthly benefit. It is based on a 62 year old Tier IIA Member with a (former) spouse of the same age and an estimated straight life annuity of \$1,644 per month. The chart is meant *solely* to

give the QDRO drafter an idea of the actuarial differences in monthly amounts based upon the payment option selected. The contingent annuitant does not have the right or the opportunity to designate a beneficiary.

Payment Option	Estimated Monthly Benefits At Age 62	
	Member's Monthly Income	Annuitant Income After Member's Death
Straight Life Annuity	\$ 1,644	\$ 0 (none)
50% Contingent Annuitant	1,530	765
100% Contingent Annuitant	1,433	1,433
10 Year Period Certain	1,600	1,600 (but only payable for 10 years after retirement)
20 Year Period Certain	1,486	1,486 (but only payable for 20 years after retirement)

**Important note:** If the Member remarries after the divorce and implementation of the QDRO and if the Member has been married to the “current” spouse for at least one year prior to the time the Member retires, the following rules apply:

1. No matter what is ordered in the QDRO, state statutes still require that the Member provide his or her current spouse with a lifetime benefit unless the current spouse “waives” his or her right to the benefit. Thus, at the time of retirement, if the Member selects an option factor listing the Alternate Payee as the contingent annuitant, the selection must be signed off by the current spouse as acknowledgment of receipt of the notice of option selection and of his/her understanding of the consequences of the option chosen.
2. If the current spouse does not or refused to sign off on the required option selection – if the current spouse does not “waive” his or her right to a lifetime benefit - the Plan cannot enforce the option contained in the QDRO.

This means regardless of what it states in the QDRO – the Alternate Payee will not receive a benefit after the death of the Member.

3. If the Member chooses the correct option but the current spouse refuses to execute a spousal waiver, the Division will notify all parties of this refusal. SERS **cannot** change the option election.
4. What options do the parties have in such a case? Return to court and ask for a redistribution of marital assets based upon the lost benefit because SERS **cannot** change the option election.

## VII. DISABILITY RETIREMENT AND OTHER OFFSET PROVISIONS

These guidelines previously noted “several *unique* prerequisites” with regard to a SERS retirement benefit. Disability retirement is one of those unique areas. Approximately one in every eleven SERS retirements is a disability retirement although most disability retirements are from employees who held hazardous duty positions. A link is attached to all positions that have been designated as “hazardous duty”. [Hazardous Duty Appendix](#)

The Connecticut Supreme Court case of *Mickey v. Mickey*, 292 Conn. 597 (2009) held that disability retirement benefits awarded under SERS as a result of a disability that incurred *after* a marriage has been dissolved did not constitute distributable marital property under General Statutes § 46b-81.2. A reading of the case may give the erroneous impression that the Division divides – or has the capability to divide - a disability retirement into two parts – the “regular” retirement portion and the enhanced disability benefit. This is not the case.

By way of background, an employee’s SERS disability benefit may be service-connected or non service-connected. A service connected disability retirement is available to employees even if they would not otherwise be entitled to a retirement benefit. For example, someone who worked only 4 years and then received a service connected disability award is not eligible for a “regular” retirement but would receive a disability retirement. After the employee receives disability benefits for 24 months a review is undertaken and they are considered disabled only if they are totally unable to work at any suitable and comparable job. Although such a benefit could end if the employee’s physical condition improves enough to return to work, the “disability” retirement benefit *never* reverts to a “regular” retirement benefit – a retiree could be 70 years old and would still collect a disability retirement benefit. In most cases, but not all, a disability retirement benefit is a higher monthly amount than an equivalent normal retirement benefit (based upon salary and years of service).

By way of a hypothetical example, assume AB is less than 50 years old at the time he receives a disability benefit. Assume he is Tier II and his length of service is 16 years. Assume AB’s average salary is \$59,360.41. If AB was 55 years of age and commenced benefits under the early retirement provisions of Tier II his benefit would be \$955.50 per month. If AB was 62 and commenced benefits under the normal retirement provisions his benefit would be \$1,205.70 per month. However, under disability retirement his monthly benefit would be \$2,379.80 per month almost twice as much as a normal retirement and over 2½ times the “early” retirement. The *Mickey* court essentially held that the former spouse was not entitled to a percentage of the disability retirement but rather only entitled to a percentage of the “normal” retirement portion. Therefore, although AB receives \$2,379.80 per month, the former spouse is only entitled to receive a percentage of the \$1,205.70 per month.

But there is a price to pay for this enhanced benefit. A disability retirement, regardless of whether it is service-connected, is subject to certain offsets. The offsets that affect a disability retirement are: (1) Social Security disability (SSDI) benefits (individual and family Social Security disability payments); (2) most workers compensation payments and (3) outside earnings (where a retiree has worked or earned income from another employer while collecting a disability retirement benefit from the State). It is important to note that these benefits are not always “dollar for dollar” offsets to a SERS retirement benefit but rather are just one factor in a

statutory formula. Therefore, a disability retirement may start with one monthly benefit amount and then be reduced if and when the members receives social security disability or workers compensation benefits and increase (or further decrease) due to changes in those benefits. Workers compensation benefits alone may not reduce a benefit but when coupled with SSDI payments may severely reduce or even eliminate in its entirety a SERS monthly retirement benefit.

Additionally receipt of monies under Section 5-142(a) (Disability Payment) is not so much an offset as it is a complete bar to or cessation of the retirement benefit. What does this mean? If an employee has not yet applied for a retirement benefit, receipt of section 5-142(a) monies will prevent him or her from receiving one until the payments end – if an employee is on the retirement payroll, receipt of section 5-142(a) payments will stop the SERS retirement benefit. If the employee receives both a SERS retirement benefit and section 5-142(a) payments for the same period of time – the entire SERS benefit is treated as an overpayment. This “offset” applies regardless of the type of retirement allowance being given to the employee – and as noted it is applicable to all types of retirement income – disability, early, normal or hazardous duty.

As noted earlier, the SERS plan is a government plan not subject to ERISA. There is no segregation of funds or monies. The Alternate Payee receives payments under this approach only when (*and if*) the member receives payments. In splitting the benefit payments, the DRO may award the alternate payee either a percentage **or** a dollar amount of each of the member's benefit payments; in either case, the amount awarded cannot exceed the amount of each payment to which the member is entitled under the plan. In sum – *the member's benefit must be large enough to pay the Alternate Payee*. If the member's benefit is completely offset by outside benefits, there may be no retirement benefit to divide.

By way of example, assume a SERS retiree has a current monthly benefit of \$3,385 but has social security and workers compensation offsets which causes the benefit to be reduced (two years later) to \$2,328 per month. If the Alternate Payee receives 30% of the benefit, the benefit will start at \$1,015.50 but be reduced to \$698.40 after the offsets are applied. If the Alternate Payee's benefit is a set amount of \$1,000 per month, that amount will be paid to the Alternate Payee regardless of changes in the benefit *unless* the Members' benefit drops below \$1,000.

With the above in mind, a DRO can only address a post dissolution disability retirement benefit one of two ways:

1. Disability retirement does not apply to the QDRO. The parties make it clear in the QDRO that the QDRO does not apply to disability retirement benefits obtained after the court approval of the order as such benefits do not constitute distributable marital property under General Statutes § 46b-81.2. Accordingly, *no retirement benefit payment whatsoever will be payable to the Alternate Payee*.
2. The dollar amount approach is used If the member is awarded a post dissolution disability retirement benefit, the Division will pay the alternate payee the amount the dollar amount stated in that paragraph with conditions.

Therefore, your choices with regard to a disability retirement benefit provision in a domestic relations order are as follows:

**Disability Retirements** The parties agree that this Domestic Relations Order applies to post-dissolution disability retirement benefits and SERS is directed to pay the Alternate Payee the amount as provided in [Section B “Benefit and Payment Option”]. The parties understand that a disability retirement benefit may be offset by receipt of a social security disability award or workers compensation benefit substantially reducing or even eliminating the initial benefit. The parties understand that the monthly payment under a disability retirement may fluctuate based upon the receipt of the member of the aforementioned offsets and that the alternate payee’s and participant’s total monthly retirement benefit payment may be adjusted in accordance with statutory offsets and plan provisions.

**OR**

**Disability Retirements.** The amount of benefits provided in [Section B “Benefit and Payment Option”] do not apply to disability retirement benefits obtained by the participant post-dissolution as such benefits do not constitute distributable marital property under General Statutes § 46b-81.2. Accordingly, the parties agree that this Order does not apply to post dissolution disability retirement benefits obtained under SERS and no retirement benefit payment will be paid to the Alternate Payee.

It is also important to note the connection between hazardous duty members and disability retirements. Hazardous duty members comprise a large portion of disability retirements. In many “hazardous duty” QDROs the Alternate Payee benefit is determined through use of the marital portion methodology (which is limited to hazardous duty members). If the member does not take a hazardous duty retirement but rather takes a disability retirement (this is what happened in *Mickey*), we cannot use the marital portion methodology in calculating the Alternate Payee’s benefit under a disability retirement benefit as this may give the Alternate Payee, in contradiction of *Mickey*, an enhanced benefit from the “regular” retirement. In all cases, the preferred methodology is the set dollar amount.

If the Member has already applied for, or is receiving a disability retirement benefit at the time of the divorce, then the provisions of *Mickey v. Mickey* do not apply and either a set dollar amount or the percentage of benefit may be used.

## **VIII. LEGAL SEPARATION**

Connecticut is one of the few states that allows for the entry of a judgment known as a legal separation. This is not a situation where a couple simply decides to reside separately while awaiting a divorce but rather a situation where the parties are economically divorced but still legally married. The parties obtain a judgment of legal separation as well as a judgment that equitably distribute assets, makes support and alimony awards, apportion debts, sells the marital home, and divides pensions. A decree of legal separation has the practical effect of a decree dissolving the marriage except that neither party is free to marry a third person.

SERS recognizes and allows for the division of pension benefits (via a QDRO) in a legal separation. SERS considers and treats a legal separation as if it were a divorce for purposes of retirement and survivor benefits. Thus, a decree or entry of legal separation dissolves **all** “surviving spouse” protections and benefits and ends any and all survivor entitlement under SERS. For the protection of the parties, all of these issues should be addressed in a QDRO as if the parties were undergoing a divorce rather than a legal separation. However, if they are not addressed in a QDRO, SERS’ policy and position is that a decree of legal separation terminates survivorship benefits and amounts to a spousal waiver sufficient to allow a re-designation of beneficiary to become effective. In short, if the court enters a judgment of legal separation and there is no QDRO filed with the Division, the Member would be considered “single” and free to choose whatever benefit payment or survivor option he wishes to upon retirement.

SERS acknowledges that if the parties should reconcile, they may apply to the Court for a revocation or a suspension of the legal separation. It is important to note that the QDRO is **not** affected by a reconciliation of the parties and their resumption of cohabitation. Rather, if the parties become reconciled pursuant to a legal separation, and if SERS has already accepted a QDRO, SERS treats the reconciliation as if the parties had remarried as of the date the Court accepted the motion and vacated the separation. SERS requires a certified copy of the court decision in such a case. Merely moving back in together is insufficient. There is also no continuity of benefit. For example if the legal separation and QDRO was granted on January 1<sup>st</sup> and the official reconciliation was December 31<sup>st</sup> – the spouse would not be considered the Member’s spouse under SERS for the time period of January 1 - Dec. 31<sup>st</sup>. Once again SERS treats the entry of a judgment of legal separation as if it was a formal dissolution of marriage for all retirement and pension benefit purposes.

## **IX. POST DISSOLUTION HEALTH INSURANCE ISSUES FOR SPOUSES**

**Important note on state employee health insurance:** Spousal health insurance is terminated upon a decree of marital dissolution or legal separation. Both a divorce and a legal separation are specifically listed as “qualifying events” for the termination of health care benefits and the commencement of a party’s COBRA rights.

In short, upon a divorce, the spouse will receive a COBRA notice with regard to health insurance coverage upon the entry of a judgment of divorce or legal separation. It does not matter if the Alternate Payee is listed as a contingent annuitant on a payment election option.

The Retirement Services Division does not handle retiree health care issues. For information on health insurances visit the OSC website at: <http://www.osc.state.ct.us/empret/indxhlth.htm>

## **X. ISSUES RELEVANT TO THE SERS DEFINED BENEFIT PLANS**

Among the issues and items to be considered by both parties in drafting a QDRO for SERS’ defined benefit plan are:

- Remember – there are three “income related” issues that need to be addressed in a SERS QDRO: (a) the portion of the Member’s monthly benefit to be assigned the Alternate Payee; (b) possible Member

contributions and distribution thereof in case of death or termination (but remember – contributions are different for each Tier); and (c) the payment option (survivorship issues).

- Should the benefit be computed as a straight dollar amount or as a percentage of the Member's actual retirement payment? **DO NOT INCLUDE MORE THAN ONE ALTERNATIVE IN YOUR ORDER OR A CHOICE OF ALTERNATIVE DEPENDING ON CIRCUMSTANCES AS IT WILL BE REJECTED.**
- What "Tier" of SERS does the Member belong (e.g. Tier I, Tier II, Tier IIA, or Tier III)? Is the Member required to contribute to his or her retirement plan? Is so, what is the percentage of the contribution? Does the Member qualify for retirement benefits at the time of the QDRO? Is the Member in a hazardous duty position?

*Remember*, payment to the Alternate Payee is contingent upon the Member actually retiring and receiving a retirement allowance. Assume that an Alternate Payee and a non-hazardous duty "Tier II" Member were married for 20 years and divorced when the Member was 40 years old. The Member dies when he is 42 having worked for the state for 9 years. There are no retirement benefits or contribution distributions available or payable to the Alternate Payee.

- Know the different retirement payment options available to the Member and their effect upon the Alternate Payee if chosen. If the QDRO does not specifically identify the benefit payment option, then SERS will presume that the Member is free to select any available retirement option upon retirement (e.g. straight life, 10 year certain, etc).
- In drafting a QDRO, make sure you consider not only the monthly benefit amount but payment options at the time of retirement and the effect of early retirement (if available) on the benefit.
  - *Remember*, a QDRO may award to the Alternate Payee all or part of the Member's basic retirement benefits.
  - *Remember*, it is possible to have future increases in the Member's benefits. Basic retirement benefits may increase due to circumstances that occur *after* a QDRO has been entered, such as COLAs, crediting of additional years of service, or legislative amendments to the plan's provisions. However a straight dollar amount will not be affected by these future increases.
  - *Remember*, the Member's benefit amount may change at retirement depending on which benefit payment option he chooses – a choice which may have an effect on the

expectation of the parties if a percentage of the benefit amount is chosen.

- The effect of the Member and the Alternate Payee's death on the benefit. Unless the Alternate Payee has been named as a contingent annuitant, the Member's post-retirement death will stop any benefit payment made to the Alternate Payee. However, being named as a contingent annuitant may have the effect of ultimately giving the Alternate Payee additional benefits not originally contemplated by the order. Remember: the SERS plan does not permit the Alternate Payee to name a beneficiary. Rather, the SERS plan provides that on an Alternate Payee's death before payment, any undistributed benefit is restored to the Member.
- Surviving and/or subsequent spouse issues. For example, if the plan Member has remarried and has been married for at least one year prior to his/her retirement date, written spousal consent from the current spouse will be required if he/she does not name his/her current spouse as the lifetime contingent annuitant even if this occurs after entry of the QDRO. What does this mean? If the QDRO requires the Member to list the Alternate Payee as a 50% contingent annuitant and the "new" spouse does not sign off on the required option selection, the Plan cannot enforce the option contained in the QDRO.
- Lastly, if the divorce is occurring after retirement and the Member is in pay status, the payment option cannot be changed. The rule of thumb for a post retirement divorce is "once a spouse, always a spouse." Thus, while the Member's benefit may be divided, the payment option he has chosen, etc. straight life, 50% spouse, 10 year certain, and contingent annuitant cannot be changed.

## **XI. PLAN PROVISIONS AND CONDITIONS IN GENERAL**

1. SERS is a defined benefit plan. As such, it is funded by the State on an actuarial basis; there are no State contributions individually assigned to an employee's account. State contributions are never available to the employee or to an Alternate Payee for distribution. Separate accounts are not maintained for Members and Alternate Payees. Do not submit an order which treat Member's interests like accounts in a defined contribution plan. Such treatment will lead to a rejection of the order, which will cause a loss of future benefits for Alternate Payees. Drafters are reminded that SERS benefits are determined by a formula and that Member's contributions (if any) does not necessarily represent the full "value" of a Member's interest.
2. If the employee is a Member in a SERS plan which requires employee contributions, an individual employee contribution account has been established for the Member consisting of his/her own contributions plus interest earned on the account. Actively employed participants are not eligible to withdraw any portion of the employee contribution balance. In the event of the plan Member's termination of employment or death prior to retirement,

the employee contribution account may be available for distribution. Remember, contributions and distributions may be different depending upon Tier and whether the Member's position is designated as hazardous duty.

3. SERS is not required to provide for any type or form of payment, or any option that is not otherwise provided under the plan.
4. An Alternate Payee has no individual rights with respect to the plan. Payment to the Alternate Payee is contingent upon the Member actually retiring and receiving a retirement allowance.
5. SERS will provide the employee benefit statement. SERS does not have actuaries on staff and is unable to provide information regarding the actuarial value of the benefit plan.
6. No lump sum payment of the Member's contributions - if any - in the plan can be made to the Alternate Payee unless the Member is eligible for a refund and applies for a withdrawal of such funds.
7. The IRS Code, Section 414(p)(5) provisions relating to the continuation of the Alternate Payee as the survivor of the plan Member are not applicable to governmental pension plans. The dissolution of the marriage will therefore terminate the spouse's right to be treated as the surviving spouse of the plan Member.
8. If the plan Member dies prior to the commencement of retirement, the Alternate Payee may be eligible for some payment if the Member paid employee contributions as part of his/her plan membership – in that case the Member's designated beneficiary will receive a lump-sum refund of the employee contributions and earned interest. The distribution of contributions should be addressed in the QDRO. It is possible in some cases that no benefits or disbursements of any kind (such in the case of a Tier II Member) can be made.
9. If the plan Member dies after retirement, the continuation of benefits will depend on whether the Member elected to have his/her retirement benefits paid to someone else in the event of death or whether the Member elected lifetime only benefits with all payments ending at death.
10. In some cases, the plan Member may elect to have his/her retirement benefits paid to the former spouse in the event of the Member's death. The extent to which SERS can enforce a provision which orders the Member to elect a survivor option for a former spouse will depend on the Member's marital status and receipt of the current spouse's consent to the option election, if required.

## **XII. A SUMMARY OF SERS REQUIREMENTS FOR QDROS**

### What the Division Provides:

The Division will give the Plan Participant or their Attorney with the participant's consent an Employee Benefit Statement.

A valid QDRO must contain:

\_\_\_\_\_ The name, address and social security number of the retirement plan Member.<sup>1</sup>

\_\_\_\_\_ The name, address, and social security number of the Alternate Payee.

\_\_\_\_\_ Identify the Plan.

\_\_\_\_\_ State that the order is a domestic relations order (DRO) under the domestic relations laws of Connecticut.

\_\_\_\_\_ State the flat dollar amount of the Member's monthly benefit payment that is to be assigned to the Alternate Payee; or, in the alternative, a fixed percentage of the Member's total retirement benefit payment that is to be paid to the Alternate Payee at the time of retirement. All percentages have to be as of the total retirement amount at the date of retirement. We cannot isolate specific periods of time. The Plan is not responsible for formula errors or ambiguous language on the part of the drafter.

\_\_\_\_\_ Only one annuitant can be named except in the case of a 10 or 20 year payment election option if chosen. If the alternate payee is not named as the contingent annuitant the duration of the monthly benefit payments (the distribution) to the Alternate Payee may not extend beyond the lifetime of the plan Member. As benefit obligations cease with the death of the Alternate Payee, SERS does not disburse payments to the estate of the Alternate Payee.

\_\_\_\_\_ State the arrangement for the distribution of the Member's contributions and credited interest (if applicable – remember most Tier II members do not make contributions) in the plan. This contingent method of payment would become operative if the Member is eligible for a lump sum payment of his/her contributions and interest - if any - in the plan, and the Member affirmatively elects to receive such lump sum payment; or, alternatively, the contingent arrangement becomes operative if: 1) the Member dies prior to commencing monthly benefit payments under the plan, 2) the Member has contributions and interest remaining in the plan, and 3) no continuing survivor payments are required in accordance with the provisions of the plan. A QDRO can bar the Member from taking a refund of his/her contributions.

\_\_\_\_\_ State that the payments will begin at the time distributions to the Member begins, at the time of retirement.

\_\_\_\_\_ Have a provision regarding the applicability of a disability retirement benefit.

\_\_\_\_\_ The document must be court ordered signed and sealed by the Judge with the seal from the Clerk of the Court. Ideally, we would like to have the Member, alternative payee and their respective attorneys (unless the parties are *pro se*) sign the QDRO. Non certificated court ordered QDROs are not acceptable and will be returned.

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<sup>1</sup> Social security numbers are required. However, with the court's approval, the parties' social security numbers may be submitted on a separate document and sent to the Division with the certified QDRO.

A valid QDRO CANNOT:

- Require the Division to maintain separate accounts.
- Require the Division to pay any amounts to attorneys, financial institutions or others.
- Require the Division to provide a type or form of benefit or option not already provided.
- Require the Division to pay increased benefits (determined on the basis of actuarial value).
- Take precedence over any QDRO previously accepted by the Division involving the same Member and a different spouse.
- Use wording or statutory provisions applicable to ERISA plans.

**For actuarial and other reasons, the Division will request certain information from the Alternate Payee including but not limited to a copy of his or her birth certificate, depending on what payment option is noted in the QDRO.**

**Alternate Payee and the Member must notify the Plan Administrator of any change of address so that this QDRO can be carried out in accordance with the law.**