

MODEL ELIGIBLE DOMESTIC RELATIONS ORDER

FOR MEMBERS AND FORMER MEMBERS OF THE

MONTGOMERY COUNTY PUBLIC SCHOOLS

EMPLOYEES' RETIREMENT AND PENSION SYSTEM

Important: This Model is presented for informational purposes only, and should not be taken as legal advice.

Montgomery County Public Schools
November 22, 2021

Introduction

This Model Domestic Relations Order (“Model”) contains model language for attorneys who are involved in the preparation of a Domestic Relations Order (“DRO”) that addresses the plan benefits of a member or former member of the Montgomery County Public Schools (MCPS) Employees’ Retirement and Pension System.

The purpose of this Model is to make it easier for parties in a divorce to ensure that a DRO will be eligible for processing by MCPS. **The Model and this introduction are presented for informational purposes only, and should not be taken as legal advice.** MCPS does not advise participants, former spouses (“alternate payee”), or attorneys about how to draft a DRO that best suits the wishes and intentions of the parties. This is the task of the parties and attorneys involved. MCPS’s role is ministerial.

The following points should be considered:

1. **Exemption from ERISA.** As a government-sponsored plan, the MCPS Employees Retirement and Pension System is exempt from Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”). A DRO that makes general reference to ERISA, the Internal Revenue Code, or is labeled, as a Qualified Domestic Relations Order or “QDRO” will not be accepted. Unlike ERISA plans, in the absence of an appropriate court order, a participant may take any action with regard to his or her benefits without any notice or consent. Additionally, an alternate payee’s rights are entirely derivative of the participant’s rights. To that end, an alternate payee may not elect beneficiaries or choose retirement options.
2. **Plan Benefit.** A DRO must clearly identify the types of plan benefits that are to be divided by the court. This Model provides some detail as to what constitutes a “plan benefit,” and is designed to give the most commonly used meanings to words most often encountered in DROs. Before drafting, attorneys may wish to consult with an MCPS retirement counselor. Retirement counselors are available by telephone at (301) 517- 8100. A few points should be considered:
 - a. **Allowance.** Unless otherwise specified, the term “allowance” is defined by regulation to include the following: service retirement benefit, disability retirement benefit, vested benefit, and cost of living adjustments. Additionally, allowance refers to de minimis one-time lump-sum distributions.
 - b. **Pre-retirement death benefits.** The MCPS plans provide both “active service death benefits,” for members who die during employment, and a death benefit for former vested members, which consists of a return of member contributions. Some survivor benefits are payable by virtue of the surviving spouse’s status and therefore, no portion of these benefits may be assigned to an alternate payee under a DRO. Normally these benefits are payable to a current spouse when the employee is eligible to retire and has designated the current spouse as sole primary beneficiary.

However, pre-retirement death benefits may be available to an alternate payee if the employee dies prior to eligibility for retirement. The benefit would be a refund of contributions and interest that the employee made to the plan.

3. **Marital Share Formula.** Under the Plan regulations, the Alternate Payee's share of a plan benefit may be expressed as a fixed dollar amount, a fixed percentage, or a formula that *clearly divides* a plan benefit. The regulations provide criteria for the acceptance of a formula to divide a plan benefit. Typically, parties use the following formula to divide the plan benefits earned during a marriage:

$$\frac{\text{Total months of marriage during which participant accrued service credit}}{\text{Total Months of Service credit}} = \text{The "Marital Share Fraction"}$$

Alternate Payee's share = Marital Share Fraction x ___ %

This formula is described in the Model as follows:

The alternate payee's share of the participant's allowance is declared to be the "marital share fraction" multiplied by . The "marital share fraction" is the following fraction: the numerator is the total number of months of the parties' marriage during which the PARTICIPANT accumulated service credit in the MCPS Plan, up until and including the date of the Judgment of Divorce, and the denominator is the total number of months of the PARTICIPANT'S service credit in the MCPS Plan.

4. **Survivor Benefits At Retirement.** All MCPS plans permit a member, at retirement, to select a reduced allowance in order to provide post-retirement survivor benefits to a designated beneficiary. These are optional benefits that will flow to a designated beneficiary following the death of a retiree. Several points should be considered:

- a. **Description of options.** Two different types of optional post-retirement survivor benefits are available:

Lifetime Benefit. Two of the options provide for monthly payments to a designated beneficiary for life. For such "optional survivor allowances," only *one* individual may be designated to be the beneficiary. Thus, if the parties wish to designate the alternate payee as the beneficiary of an optional survivor allowance, the DRO must provide that the participant shall designate and maintain the alternate payee as the sole beneficiary. It should be noted that such an action would preclude the participant from designating a different beneficiary (such as a current spouse) at the time of retirement.

Lump Sum Payment. Two of the options provide for a lump sum payment to a designated beneficiary or beneficiaries. If the parties wish to designate the alternate payee as the beneficiary, the DRO must provide that the participant shall designate and maintain the alternate payee as the beneficiary.

Out-of-State Domestic Relations Orders. If submitting a DRO that has been issued in a state other than Maryland:

A). *Cite to proper legal authority* – An out-of-state DRO must cite the statutory law for dividing pension benefits in a divorce of the state where the order is executed (e.g., Md. Code Ann. Family Law Article §8-202)

B). *Filing under Uniform Enforcement of Foreign Judgments Act.* An out-of-state DRO that divides pension benefits in Maryland must include verification that the DRO has been appropriately filed in a Circuit Court in Maryland in accordance with § 11-802 of the Uniform Enforcement of Foreign Judgments Act, Md. Code Ann., Courts and Judicial Proceedings. MCPS requires a true test copy of the DRO filed in and stamped by a Circuit Court in Maryland as such verification.

IMPORTANT INSTRUCTIONS FOR USING THE MODEL

This model provides a basic format for use in preparing a DRO. Various alternatives for dividing benefits are offered. **THIS MODEL IS NOT INTENDED AS A CHECK-OFF FORM. ANY ALTERNATIVES THAT ARE NOT SELECTED MUST BE REMOVED FROM THE DRO BEFORE SUBMISSION.** To prevent confusion in the administration of a DRO, MCPS will not accept a DRO that contains options that are not chosen by the parties.

IN THE CIRCUIT COURT FOR _____ * _____

_____ * Plaintiff *

v.

_____ *Defendant *

Case No. _____ *

ELIGIBLE DOMESTIC RELATIONS ORDER

Upon consideration of the Judgment of Absolute Divorce entered in the above-captioned case, it is this ____ day of _____, _____, ORDERED,

1. This Order relates to the disposition of certain benefits of [(NAME OF PARTICIPANT)] to be provided by the Montgomery County Public Schools Employees Retirement and Pension System (“participant’s plan”).
2. The parties hereto were married on [(DATE OF MARRIAGE)], and this Order is entered incident to a final Judgment of Absolute Divorce entered on [(DATE OF DIVORCE)]

3. The PARTICIPANT is identified as follows:

Name: [(NAME OF PARTICIPANT)]
Address: [(ADDRESS)]
Date Of Birth: [(DATE OF BIRTH)]
Social Security No.: [(SOCIAL SECURITY NUMBER)]
MCPS ID No.: [(EMPLOYEE IDENTIFICATION NUMBER)]

4. The ALTERNATE PAYEE is identified as follows:

Name: [(NAME OF FORMER SPOUSE)]
Address: [(ADDRESS)]
Date Of Birth: [(DATE OF BIRTH)]
Social Security No.: [(SOCIAL SECURITY NUMBER)]

5. The ADMINISTRATOR of the MCPS Employees Retirement and Pension System is identified as follows:

Montgomery County Public Schools
Employee and Retiree Service Center
45 West Gude Drive, Suite 1200
Rockville, Maryland 20850

6. To accommodate the marital property distribution between the parties, IT IS HEREBY ORDERED AS FOLLOWS:

A. **Allowance.** The ALTERNATE PAYEE'S share of the PARTICIPANT'S allowance is declared to be

(Choose Alternative i., ii., or iii.)

- i. [\$____ DOLLAR AMOUNT]
- ii. [____ PERCENTAGE]
- iii. [____ PERCENTAGE (%)] multiplied by the "marital share fraction." The "marital share fraction" is the following fraction: the numerator is the total number of months of the parties' marriage during which the PARTICIPANT accumulated service credit in the MCPS Employees Retirement and Pension System, up until and including the date of the Judgment of Divorce, and the denominator is the total number of months of the PARTICIPANT'S service credit in the MCPS Employees Retirement and Pension System at the time of commencement of benefits payable to the ALTERNATE PAYEE.

B. **Refund of accumulated contributions.** If the PARTICIPANT elects to receive any refund of accumulated contributions, a transfer refund, or any other lump sum distribution of a Plan Benefit not addressed elsewhere herein, the ALTERNATE PAYEE'S share is declared to be:

(Choose Alternative i., ii., or iii.)

- i. [\$_____DOLLAR AMOUNT]
- ii. [_____PERCENTAGE]
- iii. [_____PERCENTAGE (%)] multiplied by the “marital share fraction,” as defined in paragraph 6A.

C. Pre-retirement death benefit.

(Choose Alternative i., ii., or iii.)

- i. No share of any pre-retirement death benefit payable with respect to the PARTICIPANT is assigned to the ALTERNATE PAYEE under the terms of this order
- ii. The PARTICIPANT shall designate and maintain the ALTERNATE PAYEE as the sole primary beneficiary of the pre-retirement death benefit, for the ALTERNATE PAYEE’S lifetime
- iii. If a pre-retirement death benefit is payable with respect to the PARTICIPANT, and if the ALTERNATE PAYEE survives the PARTICIPANT, the ALTERNATE PAYEE’S share of the pre-retirement death benefit is declared to be:

(If Alternative iii. is selected, also choose Alternative 1), 2), or 3).)

- 1) [\$_____DOLLAR AMOUNT]
- 2) [_____PERCENTAGE]
- 3) [_____PERCENTAGE (%)] multiplied by the “marital share fraction,” as defined in paragraph 6A.

D. Post-retirement survivor benefit.

(Choose Alternative i., ii., or iii.)

- i. At retirement the PARTICIPANT shall select an optional form of allowance providing for a post-retirement survivor benefit and shall designate the ALTERNATE PAYEE as the sole primary beneficiary, for the ALTERNATE PAYEE’S lifetime.

(If Alternative i. is selected, also choose Alternative 1 or 2.)

- 1 The PARTICIPANT shall select Option [_____].
- 2 The PARTICIPANT shall select any Optional form of allowance permitted by the terms of the participant’s plan, that provides for a post-retirement survivor benefit (either annuity or lump-sum benefit, is applicable)

- ii. At retirement, the PARTICIPANT may select an optional form of allowance, and may designate an individual other than the ALTERNATE PAYEE as the beneficiary of any post-retirement survivor benefit

(If Alternative ii. is selected, also choose Alternative 1a, or 1b.)

- 1a If the PARTICIPANT selects an optional form of allowance at retirement, the PARTICIPANT shall select Payment Option [].
- 1b The PARTICIPANT may select any Optional form of allowance permitted by the terms of the participant's plan, that provides for a post-retirement survivor benefit (either annuity or lump-sum benefit, is applicable)

(In addition, if Alternative ii. is selected, chose Alternative 2a or 2b.)

- 2a No share of any post-retirement survivor benefit is assigned to the ALTERNATE PAYEE under the terms of this order
- 2b If a post-retirement survivor benefit is payable upon death of the PARTICIPANT, and if the ALTERNATE PAYEE survives the PARTICIPANT, the ALTERNATE PAYEE'S share of the post-retirement survivor benefit payable with respect to the PARTICIPANT is declared to be:

(If Alternative ii. (2b.) is selected, also choose Alternative i., ii. or iii.)

- i. [\$_____ DOLLAR AMOUNT]
- ii. [_____ PERCENTAGE]
- iii. [_____ PERCENTAGE (%)] multiplied by the "marital share fraction," as defined in paragraph 6A.

iii At retirement, the PARTICIPANT shall select the maximum benefit and may not select an optional form of allowance that provides for a post-retirement survivor benefit.

E. Method and timing of payments; restrictions. MCPS is hereby directed to make payments of the ALTERNATE PAYEE'S share directly to the ALTERNATE PAYEE.

(Choose Alternative i. or ii.)

- i. **At Retirement Option.** Payments to ALTERNATE PAYEE commence if, when, and as payments are made to the PARTICIPANT, typically at the retirement of the PARTICIPANT. The ALTERNATE PAYEE'S assigned interest in the PARTICIPANT'S accrued benefit shall be paid as a monthly payment and shall cease at the death of the ALTERNATE PAYEE.

- ii. **Early Commencement Option.** Payments to the ALTERNATE PAYEE commence at any time after the PARTICIPANT becomes eligible for early retirement under the terms and conditions of the PARTICIPANT'S benefit plan. The benefit amount payable to the ALTERNATE PAYEE is reduced due to early payment commencement using the Plan defined early reduction factors. The ALTERNATE PAYEE'S assigned interest in the PARTICIPANT'S accrued benefit shall be paid as a monthly payment and shall cease at the death of the ALTERNATE PAYEE

F. Obligations of Alternate Payee. It is the obligation of the ALTERNATE PAYEE to promptly: (a) provide MCPS a certified copy of this Order, and modifications or amendments hereto; (b) notify MCPS in writing of any change of name or address; and (c) comply with all reasonable requests from MCPS for information and documentation necessary for processing of all or any portion of a PARTICIPANT'S plan benefit to the ALTERNATE PAYEE.

G. Obligation of Participant. It is the obligation of the PARTICIPANT to promptly: (a) notify MCPS in writing of any change of name or address; and (b) comply with all reasonable requests from MCPS for information and documentation necessary for processing payment of all or any portion of a PARTICIPANT'S plan benefit to the ALTERNATE PAYEE. Additionally, the PARTICIPANT is responsible for completing and submitting any applications or forms required by MCPS to effectuate any provision of this Order, including, but not limited to, any form required by MCPS to designate the ALTERNATE PAYEE as beneficiary. If the PARTICIPANT takes any action in contravention of any provision of this Order, including, but not limited to, this Paragraph 6, the PARTICIPANT shall bear the sole and exclusive liability for such action, and not MCPS.

H. Tax Consequences of payments. All payments to the ALTERNATE PAYEE by MCPS shall be includable in the taxable income of and taxable to the ALTERNATE PAYEE. After-tax contributions shall be allocated to the parties in the same proportion as the total amount of the ALTERNATE PAYEE'S share bears to the PARTICIPANT'S total plan benefit.

- I. **No requirement to retire.** No provision of this Order shall be construed to require the PARTICIPANT to retire at any particular age or length of service.
 - J. **Transfers.** MCPS is not liable to make further payments to the alternate payee if the plan participant transfers to another retirement or pension system not administered by MCPS.
7. If the ALTERNATE PAYEE dies before commencement of payments to the ALTERNATE PAYEE, no benefits shall be paid to or for the benefit of the ALTERNATE PAYEE, his/her estate, heirs, successors, personal representatives or assignees. If the ALTERNATE PAYEE dies after the commencement of payments to the ALTERNATE PAYEE, no further benefit shall be paid to the ALTERNATE PAYEE, his/her estate, heirs, successors, personal representatives, or assignees.
 8. This order is not intended, and shall not be construed in such a manner as to require the Plan to: (a) provide any type or form of benefits, or any option not otherwise provided for under the Plan, (b) provide increased benefits determined on the basis of an Actuarial Equivalent value, (c) pay benefits to the ALTERNATE PAYEE that are required to be paid to another alternate payee under another Order, or (d) create a right in any benefit except to the extent the PARTICIPANT is vested in such benefit. Notwithstanding anything else in this Order, the sum of the Actuarial Equivalent value of benefits to be paid to the ALTERNATE PAYEE pursuant to this Order and the Participant shall be no greater than the Actuarial equivalent value of the benefits that would have been paid to the PARTICIPANT under the Plan but for this Order.
 9. This Court retains jurisdiction to amend this Order for the purpose of its acceptance and/or administration by MCPS or to effectuate the terms of the parties' Settlement Agreement and/or Judgment of Divorce.

Judge _____

Circuit Court for _____

Consented as to form:

PARTICIPANT _____

ALTERNATE PAYEE _____

Attorney for Participant _____

[Address and telephone]

Attorney for Alternate Payee _____

[Address and telephone]