

MACOMB COUNTY EMPLOYEES' RETIREMENT SYSTEM

POLICY RESOLUTION

Adopted: 8-11-2016

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

WHEREAS, the Board of Commissioners of the Macomb County Employees' Retirement System ("Retirement Commission") is vested with the authority for the general administration, management and operation of the Macomb County Employees' Retirement System ("Retirement System"), and

WHEREAS, Public Act 46 of 1991, MCL 38.1701 *et seq.* ("Public Act 46" or the "EDRO Act") mandates that all public employee retirement systems must comply with Eligible Domestic Relations Orders ("EDROs") issued by Michigan state courts pursuant to the domestic relations law of the State of Michigan, and

WHEREAS, Public Act 46 requires the establishment of reasonable procedures for determining if domestic relations orders received by the retirement system are EDROs under the EDRO Act, and

WHEREAS, the Retirement Commission is desirous of stating 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 (e.g. separation and/or divorce), and

WHEREAS, the Retirement Commission has discussed this matter with its Legal Counsel who, in conjunction with the Retirement Commission's Actuary, has developed and recommended procedures and forms for use in this regard,

THEREFORE BE IT RESOLVED, that the Retirement Commission hereby adopts the attached "Statement of Administrative Policies and Procedures Regarding Domestic Relations Matters", and

FURTHER RESOLVED, that a copy of this resolution and the attached policy shall be provided to the Retirement Commission's Actuary and Legal Counsel, and

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

**MACOMB COUNTY
EMPLOYEES' RETIREMENT SYSTEM**

***Statement of Administrative Policies and Procedures Regarding
Domestic Relations Matters***

I. DOMESTIC RELATIONS LEGISLATION

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 domestic relations matters. There were certain significant aspects in the legislation which impacted directly upon the administration of retirement systems, including:

1. Any rights in and to vested pensions or annuities that were accrued during a 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 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).

To ensure that retirement benefits are considered in each divorce and separate maintenance action, parties to such actions are required to include 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 domestic relations matters. 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 simple domestic relations orders (DROs), in accordance with the Support and Visitation Enforcement Act and the Public Employee Benefit Protection Act, 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 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 only permit the Retirement System to divide the participant's retirement benefit between the parties, but do not afford the ex-spouse other benefits (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.

In 1991, the Michigan legislature enacted the Eligible Domestic Relations Order 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 (EDROs) issued by state courts and establishes specific requirements for those systems created and covered by state laws.

SUMMARY ANALYSIS OF THE 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 must meet the following requirements:

1. The order must state the name, last known address and social security number of the participant. [It is recommended that this information be provided in an attachment to the EDRO to protect the personal information of the participant from becoming a part of the public record.]
2. The order must state the name, last known address and social security number of the alternate payee. [It is recommended that this information be provided in an attachment to the EDRO to protect the personal information of the participant from becoming a part of the public record.]
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 must state 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 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 option 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. (Note: This form of benefit is only available if the participant and alternate payee commence receipt of benefits at the same time.)
3. A single life annuity that is equal to the alternate payee's share of the benefit payable throughout the life of the participant.

The EDRO may provide for:

1. The alternate payee's benefit shall begin at the time that the participant retires or the alternate payee may elect payments to commence on any date on or after the participant's earliest retirement date prior to the participant's termination of employment in an actuarially equivalent amount.
2. The alternate payee may be determined to be the spouse of the participant thereby rendering him/her eligible for surviving spouse benefits (or a portion of such benefits).
3. If an alternate payee that is entitled to an actual interest in a share of a benefit that is or will become payable to a participant dies before receiving any payment, that interest reverts to the participant.
4. Post-retirement benefits of the participant in which an alternate payee may share as provided in the EDRO, include but are not limited to:
 - a. A supplemental annuity;
 - b. A supplemental payment to a participant;
 - c. A percentage increase to a benefit payable to a participant; and
 - d. Any other payment to a participant or increase to a benefit payable to a participant, excluding health benefits.

ALTERNATE PAYEE ELECTION

An 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. 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.

SURVIVOR BENEFIT

An EDRO may provide that the former spouse is considered to be the spouse of the participant for the purpose of receiving survivor benefits. 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.

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

The above analysis is merely a summary. 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.

II. PLAN OVERVIEW

The following is an overview of the Retirement System and some of the Plan provisions. The parties to a domestic relations proceeding and/or their legal counsel should review the plan document(s) to familiarize themselves with the Retirement System and the benefits provided.

The Retirement System is a qualified governmental plan under applicable provisions of the Internal Revenue Code and consists of a defined benefit plan. The benefit provisions of the Retirement System are contained within the Macomb County Employees Retirement System Ordinance ("Retirement Ordinance"), as amended by the individual member's applicable collective bargaining agreement. In the event of a conflict between the plan provisions and the collective bargaining agreement, the collective bargaining provisions prevail.

III. SAMPLE EDRO

The Retirement Commission 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 Services office [Form DRO -1A(active employee), Form DRO - 1B(current retiree)].

IV. REQUESTS FOR INFORMATION

The Retirement Commission 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.

V. COSTS

1. **Policy Statement.** The Retirement System frequently is 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 Commission to establish a reasonable procedure to determine if a domestic relations order is an Eligible Domestic Relations Order under the EDRO Act. The Retirement Commission 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 Retirement Commission'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 Macomb County's Corporation Counsel. Despite the increased costs to the Retirement System and the taxpayers of Macomb County imposed by the enactment of domestic relations legislation, the Legislature has not provided funding to administer the legal mandates of the applicable legislation. The Retirement Commission is vested with the fiduciary responsibility and authority for the general administration and management of the Retirement System. The Retirement Commission is of the opinion that the actuarial costs for providing estimates and calculations is not the responsibility of the Retirement System, but is the responsibility of the member.
2. **Deposit.** Any domestic relations order or request for any calculations submitted to the Retirement System shall be accompanied by a deposit of \$450.00 made payable to the Macomb County Employees' Retirement System, which deposit shall be applied toward the reimbursement of the Retirement System's professional advisor's fees and costs associated therewith. Any overpayment shall be returned

to the member. If the required deposit is insufficient to reimburse the Retirement System fully, the member shall forthwith tender such additional amounts as may be required. In the event said costs are not paid by the member to the domestic relations proceedings, the applicable costs, plus interest at the Plan's actuarially assumed rate, shall be deducted from the respective member's benefits at such time as benefits become payable by the Plan.

3. **Upon receipt of an entered domestic relations order**, the Retirement Commission shall follow the procedures outlined in Section VI. The actuarial costs directly attributable to actuarial review (i.e., that the EDRO does not increase plan costs and complies with all applicable laws) are the responsibility of the member.
4. **Upon the participant's retirement**, the Retirement System 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 member.

VI. ENTERED ORDERS

1. Upon receipt of a judgment or order purporting to be an Eligible Domestic Relations Order, the Retirement Commission is required to acknowledge receipt of said judgment or order.
2. The Retirement Commission 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 Retirement Commission will proceed with a determination as to whether the order is an effective Eligible Domestic Relations Order. An "Acknowledgment of Receipt of Judgment or Order Purporting to be an Eligible Domestic Relations Order" form letter will be completed by the Retirement Administrator and forwarded to the parties. [Form DRO - 2]
3. The Retirement Administrator shall forward a copy of the order and other appropriate information to the Macomb County's Corporation Counsel for review as to whether the order complies with the Plan's provisions and applicable law. [Form DRO -3]
4. After confirmation of compliance by Macomb County's Corporation Counsel, the Retirement Administrator will notify the appropriate parties and complete the EDRO Information form for inclusion in the participant's Retirement System file.

VII. REQUEST FOR BENEFIT ESTIMATES AND/OR CALCULATIONS

In cases where a member or retiree of the Retirement System or their respective spouse or alternate payee seeks actuarial information concerning the retirement allowance of a member

or retiree, such estimates, to the extent possible (and subject to the disclosure limitations as discussed in Section IV) may be obtained from the Retirement System's Administrator. The Retirement System shall be reimbursed for all costs associated with the request by the party or parties requesting the actuarial calculation.

VIII. ALTERNATE PAYEE'S COMMENCEMENT OF BENEFITS

1. An alternate payee must make application not less than thirty (30) and not more than ninety (90) days prior to the alternate payee's intended benefit commencement date.
2. Upon receipt and approval of an EDRO or other appropriate order, the Retirement Commission resolves to put a copy in the participant's file. The Retirement Commission 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 or some other date prior to the participant's retirement, the alternate payee must keep track of that date and make application to the Retirement System as indicated above.