

**[SAMPLE - TO BE USED IN THE EVENT OF DIVORCE
PRIOR TO RETIREMENT]**

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF

Plaintiff,

Case No:

Hon:

Defendant.

_____ /

_____ P

Attorney for Plaintiff

{Address}

{Phone#}

_____ P

Attorney for Defendant

{Address}

{Phone#}

_____ /

ELIGIBLE DOMESTIC RELATIONS ORDER

At a session of said court, held in the Courthouse,
City of _____, County of _____, State of Michigan

On

PRESENT: HON. _____

CIRCUIT COURT JUDGE

This Order is intended to serve as an Domestic Relations Order ("DRO") by which [Plaintiff/Defendant], _____ assigns, a portion of [his/her] retirement benefits, under the Macomb County Employees' Retirement System, to the [Plaintiff/Defendant], _____ in accordance with the Eligible Domestic Relations Order Act (Public Act 46 of 1991 - MCL 38.1701, *et seq.*) and the Macomb County

Employees' Retirement System. It is intended that this Order be incorporated in the Judgment of Divorce entered _____, _____, and made a part thereof.

1. The retirement system (the "Plan") subject to this Order is as follows:

Macomb County Employees' Retirement System
120 North Main St.
Mount Clemens, MI 48043

The plan consists of a defined benefit plan.

2. The Participant is the [Plaintiff/Defendant], _____,

Social Security No.: See Attached Supplemental Information Sheet.
Date of Birth: See Attached Supplemental Information Sheet.
Last known address: See Attached Supplemental Information Sheet.

3. The Alternate Payee is the [Plaintiff/Defendant], _____,

Social Security No.: See Attached Supplemental Information Sheet.
Date of Birth: See Attached Supplemental Information Sheet.
Last known address: See Attached Supplemental Information Sheet.

4. The Participant and the Alternate Payee were married on _____, _____, and were [divorced/separated] on _____, _____.

5. The Participant assigns to the Alternate Payee a portion of [his/her] benefits from the Plan and the Plan will pay benefits to the Alternate Payee according to the following terms and conditions:

(a) **SELECT:**

Alt. 1 It is the parties' intention, and the Order of this Court, that the Alternate Payee receive a monthly benefit from the defined benefit plan of _____% of the amount of the Participant's retirement allowance, including a prorata share of any guaranteed automatic annual benefit increases, which has accrued as of _____, 20____, which percentage takes into consideration the years of service, if any, that were accrued prior to the date of marriage.

OR

Alt. 2 It is the parties' intention, and the order of this Court, that the Alternate

Payee receive a monthly benefit from the defined benefit plan of \$_____, (of the Participant's retirement pension), including a prorata share of any guaranteed automatic annual benefit increases.

- (b) Payments to the Alternate Payee shall commence

SELECT:

Alt. 1 when the Participant begins to receive benefits under the Plan.

OR

Alt. 2 as selected by the Alternate Payee at any time beginning when the Participant reaches the earliest retirement date as defined in Section 2(d) of the Eligible Domestic Relations Order Act (Public Act 46 of 1991).

[Note: The EDRO may include both Alt. 1 and Alt. 2 above.]

- (c) Payments to the Alternate Payee for that portion of the retirement allowance which is being divided in Paragraph 5(a) will be made

SELECT:

Alt. 1 during the life of the Alternate Payee and shall end upon the death of the Alternate Payee.

OR

Alt. 2 during the life of the Participant and shall end upon the death of the Participant.

OR

Alt. 3 under the Plan's Option [____]. The Participant shall designate the Alternate Payee as beneficiary of the Option [____] allowance. While both parties are alive, the Plan shall pay the Alternate Payee [Alt. 1: ____%/Alt. 2 \$_____] of the reduced Option [____] retirement allowance which is being divided in Paragraph 5(a).

After the Alternate Payee's death, if the Participant is alive, the entire reduced Option [____] retirement allowance shall be paid to the Participant.

- (d) If the provisions of paragraph 5(a) above would require the Plan to provide increased benefits compared to the benefits the Plan would have paid had the divorce not occurred, determined on the basis of actuarial equivalent values, due to differences in life expectancies of the Participant and the Alternate Payee, the increased value shall be eliminated through adjustments to the benefits otherwise payable to

SELECT:

Alt. 1 the Alternate Payee

OR

Alt. 2 the Participant

OR

Alt. 3 split between the Alternate Payee and the Participant in the following proportion: ____% Alternate Payee; ____% Participant.

- Optional(e)** If the Plan pays any post-retirement cost of living benefit increase (i.e., non-guaranteed annual increases, supplemental payments/13th checks, one-time increases) on the benefits being paid from the Plan [which have accrued as of _____, 2____,] the Alternate Payee shall receive a share of each such increase that is paid after the later of the date this Order is determined by the Plan Administrator to be an EDRO, and the date when the Participant begins to receive benefits under the Plan. The Alternate Payee's share of each such increase will be in proportion to the amount of the Participant's retirement allowance that is awarded the Alternate Payee under Paragraph 5(a).

- (f) The Alternate Payee shall include in [his/her] gross income, for the tax year of receipt, all retirement benefit distributions that [he/she] receives pursuant to the Participant's assignment of benefits under this EDRO; and, accordingly, the Participant shall not include such benefit distributions in [his/her] gross income. The Alternate Payee shall be treated as the sole distributee under IRC Sections 72 and

402 of any payment or distribution that is made to [him/her] under the Participant's assignment of benefits under this EDRO.

Optional(g) The Participant shall designate the Alternate Payee as the surviving spouse for purposes of the Plan's pre-retirement surviving spouse benefit for that portion of the retirement allowance which is being divided in Paragraph 5(a).

(h) If the Alternate Payee predeceases the Participant, the Alternate Payee's interest in the Plan shall revert to the Participant.

6. This assignment of benefits shall not require the Plan to provide any type or form of benefit, or any option, not otherwise provided under the Plan. This assignment shall not require the Plan to provide increased benefits, determined on the basis of actuarial equivalent values. This assignment shall not require the Plan to provide benefits to the Alternate Payee which are required to be paid to another alternate payee under another order previously determined to be an EDRO, or as otherwise provided by Section 11 of the Eligible Domestic Relations Order Act (Public Act 46 of 1991).

7. The Participant, the Alternate Payee and the Court intend this Order to be an EDRO under the Eligible Domestic Relations Order Act (Public Act 46 of 1991), the Plan and related legislation.

8. The parties agree that their mutual intent is to provide the Alternate Payee with a retirement payment that fairly represents what they have agreed to be the Alternate Payee's marital share of the Participant's accrued retirement benefit as defined in Paragraphs 6. In the event the administrator of the Plan determines this Order not to be an DRO satisfactory to the Plan, the Participant and Alternate Payee hereby agree to submit to and request a court of competent jurisdiction to modify the Order to make it an DRO satisfactory to the Plan in such a manner that will reflect the parties' intent as herein expressed and thereafter to enter an order modifying this Order, said modification order to be entered nunc pro tunc, if appropriate, so as to comply with the Plan and related legislation.

Circuit Court Judge

Approved as to form:

_____ P _____

Date

Attorney for Plaintiff

Attorney for Defendant

P

Date

Distribution of copies:

- Original to Circuit Court Clerk
- Certified copy to Board of Trustees