

# **INFORMATION FOR DIVORCE ATTORNEYS AND MEMBERS CONTEMPLATING DIVORCE REGARDING THE HAMPSHIRE COUNTY RETIREMENT SYSTEM\***

The Hampshire County Retirement System is a regional public pension plan for employees of the towns, districts and authorities within Hampshire County except for Northampton and Easthampton. It is one of 106 Massachusetts public pension systems created and governed by MGL c. 32. It is a governmental contributory defined benefit plan exempt from ERISA. Most ERISA rules do not apply.

Membership is mandatory for covered employees. Members do not participate in Social Security while employed by governmental units covered by the Massachusetts Public Pension Law (MGL c. 32). Under current Federal laws, Social Security benefits may be offset or reduced by a governmental pension.

Members must contribute a statutorily determined percentage of salary (ranging from 5% to 11% depending on date of membership). The funds, plus statutory interest, accumulate in the members' Annuity Savings Fund. A member cannot withdraw or borrow against the funds while employed. Annuity Savings Fund information is available by a member's request or a non-member's subpoena. The Annuity Savings Fund is NOT the measure of the value of the member's potential benefit.

To qualify for benefits, a member must reach the age of 55 with at least 10 years creditable service, or have at least 20 years of creditable service, or become disabled. Superannuation (non-disability) benefits are determined by a statutory formula based on age, years of service and the average of the member's 3 highest consecutive years of salary. The maximum benefit is 80% of the 3 year average salary. Accidental disability benefits are usually 72% of salary, with no minimum age or service. Benefits are paid monthly to retirees for life, with survivor interests depending on the payment option selected at retirement.

The plan offers 3 payment options with more survivor benefits available as the retirement allowance for the member decreases. Benefits are paid through a combination of the member's contribution to the Annuity Savings Fund (the "annuity") and the taxpayer's monies (the "pension").

Retirement benefits may be directed to a former spouse who has not remarried upon the member's retirement by means of a domestic relations order ("DRO"). However, it should be noted that domestic relations orders must be consistent with MGL c. 32. Many provisions that are common in private sector Qualified Domestic Relations Orders (QDROs) are inappropriate for a public pension plan. Private plans are subject to ERISA standards and provisions which are inapplicable to governmental plans. Use of "QDRO" forms or language for ERISA-type plans will result in an order that cannot be implemented under MGL c. 32, that regulates Massachusetts Public Pension Systems.

- Adapted from materials written by Carol E. Nesson, Esq., the Boston Retirement Board, the State Retirement Board, and Barbara Phillips, Esq. of the Public Employee Retirement Administration Commission. 8/3/2001

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Although a member's annuity savings fund amount is identifiable, it is NOT the measure of the value of the member's potential benefit. The pension portion of the benefit is not determined until retirement. Although an estimate of the retirement allowance may be provided, any such estimate is based on certain assumptions that should be agreed upon by the parties involved. Estimates provided by the Retirement System are measures of future value. Calculations of "present" value should be made by an expert advisor (actuary) to the parties. The Retirement staff can assist by providing data and explanations of benefits and options to the actuary, but do not provide present value calculations.

The attached include:

Examples of unacceptable provisions

Evaluating a Participant's Interest in the Hampshire County Retirement System

Overview of issues to address in a DRO

If you are considering the use of a DRO, it must be consistent with M.G.L. Chapter 32. Please contact us for additional information and requirements. You must submit any DRO to the Hampshire County Retirement System PRIOR to submission to the Courts for approval.

For more information, please contact: Mary Baronas, Hampshire County Retirement System, 99 Industrial Drive, Northampton, MA 01060-2326, (413) 584-9100 (x104).

- Adapted from materials written by Carol E. Nesson, Esq., the Boston Retirement Board, the State Retirement Board, and Barbara Phillips, Esq. of the Public Employee Retirement Administration Commission. 8/3/2001

**DOMESTIC RELATIONS ORDERS  
EXAMPLES OF UNACCEPTABLE PROVISIONS  
FOR MASSACHUSETTS PUBLIC PENSION PLANS**

Some provisions that are common in private sector Qualified Domestic Relations Orders (QDROs) are inappropriate to be used to divide an interest in a public pension established under G.L. c. 32. Private plans are subject to ERISA (Employment Retirement Income Security Act of 1974). ERISA deals with QDROs, but most of the ERISA provisions are inapplicable to governmental plans.

**Examples of unacceptable provisions include:**

- Immediate distribution of all or part of an active member's account -

A member's annuity account can only be distributed as a return of contributions upon termination of employment and membership or as a part of a monthly retirement allowance paid upon retirement. A DRO cannot order any distribution or benefit payment while the member remains an active member of a Massachusetts Public Pension System.

- Establishment of a separate account for the Alternate Payee -

An account cannot be established in the name of or for the benefit of anyone other than a member of the Retirement System. [*Early v. Early*, 413 Mass. 720(1992)]

- Creation of a right to elect a benefit by someone other than the member -

No one other than the member or an eligible beneficiary or survivor can elect a benefit or select a benefit payment option. If an Alternate Payee receives a benefit while the member is alive, that benefit is by way of an attachment of the member's allowance. If the member doesn't receive an allowance there would be no allowance to attach and no payment can be made to an Alternate Payee (i.e. if there is a forfeiture or a suspension as the result of excess earnings or a waiver due to return to active service).

- Designation of the Alternate Payee as a "survivor"-

An Alternate Payee can only become a survivor beneficiary in a manner consistent with G.L. c 32. A DRO cannot designate the former spouse as the "survivor for all purposes"

A former spouse who has remarried cannot be named as the Option C beneficiary

A former spouse who is unremarried can be named as the Option C or Option D beneficiary, but must be unremarried at the member's retirement (Option C) and must be unremarried at the member's death if such occurs prior to retirement (Option D).

A former spouse cannot be the beneficiary of an accidental death benefit under G.L. c. 32 § 9 or § 100. The eligible beneficiary is identified in the statute.

A former spouse cannot be an Option D beneficiary if the member dies in service and leaves an eligible spouse who elects to receive the Option D benefit.

- Adapted from materials provided by Barbara Phillips, Esq., General Counsel, Public Employee Retirement Administration Commission, Boston 8/3/2001

**DOMESTIC RELATIONS ORDERS  
EVALUATING A PARTICIPANT'S INTEREST  
IN THE  
HAMPSHIRE COUNTY RETIREMENT SYSTEM**

**Current Data and Information is available by a member's request or a non-member's subpoena.**

**What the Hampshire County Retirement System CAN provide:**

In general, current data of annuity savings, creditable years of service, current average 3-year salaries can be provided. Estimates of member's benefits and payment options can also be provided with the following caveats.

The value of a member's Annuity Savings Account is NOT the measure of the value of the member's potential benefit. It is a measure of the member's contributions to the fund, plus statutory interest. A member cannot withdraw or borrow against the funds while employed.

If a member is currently eligible to retire, an estimate of benefits based on current salary years of service, and age can be provided.

If a member is either not eligible to retire, or an estimate of potential future benefits is requested, such estimates of benefits can be provided. However, assumptions on which such estimates are based must be stipulated and should be agreed upon by the parties involved. Estimates are measures of future potential benefits, NOT present value of benefits.

**What the Hampshire County Retirement System CANNOT provide:**

Calculations of "present" value are complicated and should be made by an expert advisor (actuary) to the parties. "Present" value calculations will vary widely depending on methodology and assumptions used.

Assumptions of future interest rates, salary growth, annuity savings growth, future statutory interest rates, age of retirement, etc... should be agreed upon by the parties involved.

If both parties have retirement accounts being evaluated and compared, it is important that the same assumptions and methodology be used to evaluate both plans to be comparable. We highly suggest using a single actuary.

## Appendix A: Overview of issues to address in a DRO

When drafting a DRO, you must account for the amount payable as well as various contingencies. Below is a chart of the issues you need to address in your document depending on the member's status at the time of divorce.

Issue	Member's status at time of divorce	
	Active Member	Retiree
Retirement Allowance	<p>The amount of the member's pension is calculated according to the type of retirement option the member chooses at the time of retirement.</p> <p>Specify which retirement option the member agrees to choose (A, B, C) or specify that member may choose any option.</p>	<p>The amount of the retiree's benefit is already known, the retiree cannot change his/her option selection after he/she has already retired.</p>
How the member's retirement allowance will be divided	<p>Most people use percentages to specify allocations to be paid to the alternate payee and member because the amount of pension to be received in the future is unknown until actual retirement. If percentages are used, specify clearly the dates to be used to determine the marital portion or alternate payee's allocation and specify how percentage is to be calculated (i.e. for the purposes of determining the alternate payee's allocation or marital portion, the member's creditable service will be from the date of the parties marriage to the date of divorce).</p> <p>Specify if and how COLA adjustments are to be allocated between member and alternate payee.</p>	<p>Using percentages, clearly specify the allocations to be paid to the alternate payee and member.</p> <p style="text-align: center;">Or</p> <p>Specify specific dollar amount to be paid to alternate payee with the member receiving the balance.</p> <p>Specify if and how COLA adjustments are to be allocated between member and alternate payee.</p>
In the event of the member's death	<p>Clearly specify who must be designated as the member's beneficiary and the allocation for that beneficiary and that the member must execute the proper HCRS' form in designating his/her beneficiary.</p> <p>Additionally, specify the type (lump-sum beneficiary or member-survivor beneficiary) of beneficiary. Acknowledge that a former spouse who has remarried is not eligible to be named as a member-survivor beneficiary. Also acknowledge that a member's current spouse has superior rights to claim as member-survivor beneficiary and member's designation of former spouse may be voided as matter of law.</p>	<p>The member's option selection has already been determined and cannot be changed. If the member has retired under Option:</p> <p>A) There is no beneficiary            B ) Specify who the member must designate as the lump-sum beneficiary and the percent allocation to be paid to that beneficiary to receive the remaining balance, if any, remaining in the member's annuity savings account.            C ) The original member-survivor beneficiary cannot be changed.</p>
In the event the member receives a <u>disability</u> or <u>termination allowance</u> or <u>refund</u> .	<p>Specify amount or percentage and how such percentage is to be calculated for each event.</p>	<p>These issues do not apply after a member has retired.</p>

1 COMMONWEALTH OF MASSACHUSETTS  
2 THE TRIAL COURT  
3 PROBATE AND FAMILY COURT DEPARTMENT

4 HAMPSHIRE, SS

5 John T. Bickerson, ) Docket No. [00000]  
6 )  
7 Plaintiff, )  
8 vs. ) Domestic Relations Order  
9 )  
10 Mary T. Bickerson, )  
11 )  
12 Defendant )  
13 )  
14 )

15 As a part of the final Judgment in this matter, pursuant to M.G.L. Chapter 208, Section  
16 34, governing the division of marital property between spouses and former spouses in divorce  
17 actions, and the decision of the Supreme Judicial Court, *Contributory Retirement Board of*  
18 *Arlington v. Mangiacotti, 406 Mass. 184 (1989)*, it is hereby ordered as follows:

19 ***This opening paragraph, which refers to the applicable case law***  
20 ***and statute, should not be altered or amended.***

21 **1. DEFINITIONS**

22 For the purposes of this Order, the following terms are defined:

- 23 a. "Retirement Plan" shall refer to the Hampshire County Retirement System  
24 (M. G. L. c. 32 and c. 34B, s. 19);
- 25 b. "Plan Administrator" shall refer to the Hampshire County Retirement Board, 99 Industrial  
26 Drive, Suite 2, Northampton, MA 01060;
- 27 c. "Participant" shall refer to [John T. Bickerson, 1 Litigation Drive, Boston, Massachusetts  
28 02111; Social Security Number 000-00-0000; date of birth January 1, 1900];

***The Participant is the plan participant whose retirement benefit is the***  
***subject of the Order.***

1 d. "Alternate Payee" shall refer to [Mary T. Bickerson, 1 Litigation Drive, Boston,  
2 Massachusetts 01111; Social Security number 000-00-0000; date of birth January 1, 1900];

3 *The Alternate Payee is the spouse of plan participant who will be*  
4 *receiving a share of the retirement benefit.*

5 e. "Alternate Payee's Benefit" shall refer to the separate benefit to be established and  
6 administered for the Alternate Payee pursuant to paragraph 3 or paragraph 8 of this Order.

7  
8 **2. ALLOCATION AND OPTION SELECTION OF PARTICIPANT'S RETIREMENT**  
9 **BENEFIT**

10 The Plan Administrator is advised that the Alternate Payee and the Participant have agreed on  
11 allocating the "Marital Portion" of the Participant's retirement benefit under the Retirement Plan at  
12 the time of the Participant's retirement, refund, disability or death, whichever comes first. The  
13 Alternate Payee's Benefit shall be equal to XX% of the gross hypothetical "Marital Portion" of the  
14 Participant's benefit commencing at the time of the Participant's actual retirement, death or disability  
15 calculated under Option A. The "Marital Portion" of the Participant's benefit is the hypothetical  
16 benefit which the Participant would have received at his actual retirement date in the absence of this  
17 Order, assuming that the Participant's employment terminated as of [agreed upon date, usually date  
18 of divorce]. This marital portion shall be calculated utilizing only his/her credited years and months  
19 of service earned through the [agreed upon date(s), usually date of divorce, but could be marital  
20 period from/to] and his/her highest five year consecutive average compensation as of the [date of  
21 divorce] and the Participant's age at the date of actual retirement, death, or disability.

22 *If the Participant and Alternate Payee have agreed on an option choice,*  
23 *it should be stated in this paragraph, along with a date on which to base*  
24 *the division of the benefit.*

25 *If the Order requires that the Participant select Option C, the parties may*  
26 *agree to select an alternative option in the case of remarriage of the*  
27 *Alternate Payee. If the divorce decree awards the Alternate Payee a*  
28 *percentage of the retirement through a particular date, the date should be*  
*entered in this paragraph and remain consistent throughout the Order.*

3. ALTERNATE PAYEE'S RIGHT TO BENEFITS

The Alternate Payee is awarded all right, title and interest in and to the Alternate Payee's Benefit as defined in paragraph 5 & 6 of this Order, commencing at the Participant's actual retirement date and

1 continuing while both parties are alive. This is an assignment of the Participant's interest pursuant to  
2 M.G.L. c. 32, §19.

3 *This paragraph addresses the rights that will be conferred on the*  
4 *Alternate Payee and when those rights will become effective. This*  
5 *paragraph is written in conformance with M.G.L. c. 32 and should not be*  
6 *altered or amended.*

#### 7 **4. PAYMENT OF BENEFITS BY PLAN ADMINISTRATOR**

8 The Hampshire County Retirement Board shall pay directly to the Alternate Payee the Alternate  
9 Payee's Benefit, awarded by this Order, commencing concurrently with the Participant's benefit and  
10 continuing until the first death of either the Participant or the Alternate Payee.

11 *As does the prior paragraph, this paragraph addresses the rights that will*  
12 *be conferred on the Alternate Payee and when those rights will become*  
13 *effective. This paragraph is written in conformance with M.G.L. c. 32*  
14 *and should not be altered or amended.*

#### 15 **5. DETERMINATION OF ALTERNATE PAYEE'S BENEFIT**

16 The Alternate Payee's Benefit shall be equal to [XX]% of the marital portion of the Participant's  
17 benefit commencing at the time of the Participant's actual retirement. The "Marital Portion" is  
18 defined in Paragraph 2.

19 *This paragraph allows the parties to designate the percentage to be*  
20 *received by the Alternate Payee as of a specific date. This date should be*  
21 *the same as stated in paragraph 2 and remain consistent throughout the*  
22 *Order. The example here uses a common formula to determine the*  
23 *marital portion to be awarded to the Alternate Payee. The parties can*  
24 *establish their own formula or, if the Participant is retired, a specific*  
25 *dollar amount to be awarded at the time of divorce can be stated. If you*  
26 *plan on deviating from the sample formula an attorney and the*  
27 *Retirement Board should be consulted to ensure that the particular*  
28 *formula can be implemented under the law.*

*If the parties have agreed, or the court has ordered that the benefit be*  
*split as of a particular date (usually the date of separation or divorce),*  
*this date should be used in relation to any mention of creditable service.*  
*Again, this is merely an option - the parties are free to develop any*  
*apportionment of the benefit that is consistent with the divorce decree as*  
*long as it does not violate the terms of the Retirement Plan. You should*  
*also restate the option choice if it has been agreed upon.*

*If at retirement the Participant has failed to select the specific court-*  
*ordered option, the retirement will not be processed.*



1 **6. DETERMINATION OF ALTERNATE PAYEE'S BENEFIT IN EVENT OF**  
2 **PARTICIPANT'S DISABILITY RETIREMENT**

3 In the event that the Participant receives a disability benefit from the Hampshire County Retirement  
4 Board, due to either accidental or ordinary disability, the Alternate Payee's Benefit shall be equal to  
5 [XX]% of the marital portion, as defined in Paragraph 2, of the Participant's gross disability benefit  
6 calculated at the time of the Participant's disability retirement. However, for purposes of determining  
7 the portion of the accidental disability benefit payable to the Alternate Payee, such benefit shall be  
8 calculated as if the benefit payable was an ordinary disability rather than the actual amount payable  
9 for accidental disability; the Participant shall retain 100% of the excess of the amount of the  
10 accidental disability benefit over the amount of the benefit which would have been payable for  
11 ordinary disability.

12 *Retirement benefits awarded for accidental and ordinary disability are*  
13 *calculated under statutes (M.G.L. c. 32, ss. 6 and 7) which differ from*  
14 *regular retirement calculations. Because a Participant may retire under a*  
15 *disability allowance, it is necessary to offer an alternative formula to that*  
16 *presented in paragraph 5. This paragraph allows the parties to designate*  
17 *how the benefit would be apportioned in the event that the Participant is*  
18 *retired on the basis of either accidental or ordinary disability.*

19 *This paragraph is not mandatory, but is helpful in avoiding future*  
20 *complications should the Participant retire for disability. Otherwise, the*  
21 *parties will be required to seek clarification from the court regarding the*  
22 *division of benefits.*

23 *The formula offered in this sample is a common one, defining the marital*  
24 *portion and awarding a percentage of that portion to the Alternate Payee.*  
25 *Again this is merely an option - the parties are free to develop any*  
26 *apportionment of the benefit that is consistent with the divorce decree as*  
27 *long as it does not violate the terms of the Retirement Plan.*

28 **7. OPTION ELECTION: DESIGNATION OF BENEFICIARY:**

The Participant may elect to receive his retirement benefit under Option A, B or C at the time of retirement. The Alternate Payee's benefit shall be calculated under Option A unless the Participant elects to make the Alternate Payee the beneficiary under Option C (or B). In the event the Participant elects the Alternate Payee as beneficiary such Alternate Payee's benefit shall be reduced to reflect the election of Option C (or B in the event the Alternate Payee is ineligible to receive such benefit due to her remarriage). In the event the Participant elects to make someone other than the Alternate Payee

1 the designated beneficiary of Option C (or Option B, if the Alternate Payee has remarried) then the  
2 benefit assigned to the Participant shall be reduced to reflect the entire cost of Selecting Option C (or  
3 B) rather than Option A. The cost of Option C (or Option B) shall be defined as the difference  
4 between the monthly benefit under the elected option and what the monthly benefit would have been  
5 had Option A been selected.

6 *If the Participant and Alternate Payee have agreed on an option choice,*  
7 *it should be stated in this paragraph, along with a date on which to base*  
8 *the division of the benefit. However, a former spouse who has remarried*  
9 *is not eligible to be named as an Option C beneficiary. If the Order*  
10 *requires that the Participant select Option C, the parties may agree to*  
11 *select an alternative option in the case of remarriage of the Alternate*  
12 *Payee.*

#### 11 **8. REFUND OF PARTICIPANT'S ANNUITY SAVINGS ACCOUNT:**

12 If the Participant terminates employment under the retirement plan and elects to receive a return of  
13 his accumulated contributions and interest prior to his retirement or death, the Plan Administrator  
14 shall pay directly to the Alternate Payee (or to the Alternate Payee's tax-Deferred account, if  
15 permitted by the Internal Revenue Code and if so instructed by the Alternate Payee) X percent  
16 (XX%) of the Participant's accumulated total deductions and interest [as of date of divorce or to/from  
17 the date of marriage (date) through the date of divorce] plus any accumulated interest attributable to  
18 this amount through the date of payment to the Participant.

19 *This paragraph allows the parties to award a portion of the member's*  
20 *annuity savings account to the Alternate Payee in the event that the*  
21 *Participant does not retire and instead elects to receive a return of his or*  
22 *her accumulated contributions and interest. While this paragraph is not*  
23 *mandatory, it does protect the interests of the Alternate Payee. If and*  
24 *when the Participant either applies for retirement benefits or requests a*  
25 *refund of his or her annuity savings account balance, the HCRS will*  
26 *attempt to notify the Alternate Payee of the Participant's action.*  
27 *Accordingly, it is extremely important that the Alternate Payee keep the*  
28 *HCRS informed of his or her current address.*

#### 25 **9. DEATH OF PARTICIPANT PRIOR TO RETIREMENT:**

26 In the event that the Participant should die prior to retiring and receiving [his/her] retirement benefit,  
27 the Participant hereby agrees to designate the Alternate Payee as the beneficiary for a death benefit  
28

1 pursuant to M.G.L. Chapter 32, Section 12(2)(d), provided that the Alternate Payee is living and has  
2 not remarried prior to the time of the Participant's death. Such death benefit is to be payable to the  
3 Alternate Payee. The Participant and Alternate Payee acknowledge that if the Participant remarries,  
4 the surviving spouse may have a statutory right to elect a member-survivor allowance that will  
5 supersede the Alternate Payee's rights under this paragraph.

6 In the alternative, in the event the Alternate Payee becomes ineligible to receive the death benefit  
7 provided in Section 12(2)(d) by virtue of [his/her] remarriage, the Alternate Payee shall receive  
8 [XX]% of the Participant's contributions from [agreed upon date, usually date of marriage] through  
9 [agreed upon date, usually date of divorce or separation] together with the interest credited on such  
10 contributions through the date of the Participant's death.

11 The Participant is further required to designate the Alternate Payee as the beneficiary on the  
12 prescribed form issued by the Hampshire County Retirement Board. The designation of the Alternate  
13 Payee as the beneficiary shall be continued and maintained in full force and effect during [his/her]  
14 lifetime, or until the commencement of benefit payments to both the Participant and the Alternate  
15 Payee

16 *This paragraph allows the Participant to make provisions for the*  
17 *Alternate Payee in the event the Participant dies prior to retirement. The*  
18 *Alternate Payee is only eligible for the survivor (or continuation) benefit*  
19 *if he or she has not remarried prior to the time of the Participant's death.*  
20 *The continuing survivor benefit cannot be apportioned between the*  
21 *Alternate Payee and another beneficiary. This benefit is described in*  
22 *M.G.L. c. 32, §12(2)(d). The parties are also allowed to designate the*  
23 *Alternate Payee as the lump-sum beneficiary pursuant to M.G.L. c. 32,*  
24 *§11(2)(c) in the event the Alternate Payee has remarried prior to*  
25 *Participants death.*

26 *IMPORTANT REMINDER: In Massachusetts, if the member dies and is*  
27 *survived by a spouse (who meets the statutory requirements of M.G.L. c.*  
28 *32, §12 (2)(d)) or dependent children, the surviving spouse and/or*  
29 *dependent children have a superior right to the member's retirement plan*  
30 *benefits. This means that even if the DRO and the Participant designate*  
31 *the Alternate Payee as the 12(2)(d) or 11(2)(c) beneficiary, if the*  
32 *Participant has remarried and his or her current spouse meets the*  
33 *statutory requirements of section 12(2)(d), his or her current spouse will*  
34 *have the statutory right to elect to receive this benefit superseding the*  
35 *Alternate Payee's right to benefit under this paragraph.*

1 *In effect, designation of the Alternate Payee as the 12(2)(d) member-*  
2 *survivor beneficiary or the 11(2)(c) lump-sum beneficiary will only be*  
3 *implemented if the Participant has not remarried at the time of the*  
4 *Participant's death. Again, if the Alternate Payee is to be named as the*  
5 *beneficiary under any option, the order should compel the Participant to*  
6 *designate the Alternate Payee as such on a form prescribed by the Board.*  
*Merely naming the Alternate Payee as beneficiary in the Order does not*  
*meet the statutory requirement for designating a beneficiary under the*  
*Retirement Plan.*

7 **10. TRANSFER OF ACCOUNT:**

8 If the Participant transfers to another retirement system governed by MGL c.32, the Participant shall  
9 request that the Plan Administrator forward a copy of this Order to the successor retirement system  
10 along with the Participant's account, and who shall notify the Participant and the Alternate Payee of  
11 the transfer of this Order when accomplished. The parties acknowledge that the terms of this Order  
12 may apply to a successor retirement system without a further Order assuming the order is in  
13 compliance with MGL c.32.

14 **11. ACTIONS NOT REQUIRED OF PLAN ADMINISTRATOR:**

15 Nothing in this Order shall be construed to require the Retirement Plan or Plan Administrator:

- 16 a. to provide to the Alternate Payee any type or form of benefit or any option not otherwise  
17 provided under the Retirement Plan;  
18 b. to provide to the Alternate Payee increased benefits (determined on the basis of actuarial  
19 equivalence stated in the Retirement Plan); or  
20 c. to pay any benefits to the Alternate Payee which are required to be paid to another alternate  
21 payee under another order previously determined to be a Domestic Relations Order  
22 sanctioned by the Supreme Judicial Court, *Contributory Retirement Board of Arlington v.*  
23 *Mangiacotti, 406 Mass. 184 (1989).*

24 *This paragraph contains the standard statutory language, citing the*  
25 *appropriate caselaw and provisions of Chapter 32. This paragraph should*  
*not be altered or amended.*

26 **12. ALTERNATE PAYEE'S RIGHT TO COST OF LIVING ADJUSTMENTS, IF ANY**

27 The Alternate Payee shall [shall not] be entitled to receive a pro rata share of any subsequent cost of  
28 living increases which may be granted on benefits which are in pay status.

1 *This paragraph spells out how any future cost of living adjustments will*  
2 *be passed on to the parties. In the event that a specific dollar amount is*  
3 *specified as the Alternate Payee's Benefit, then we cannot change that*  
4 *amount and any COLAs will not be paid to the Alternate Payee.*

4 **13. EFFECT OF ALTERNATE PAYEE'S DEATH:**

5 All benefits payable to the Alternate Payee and her interest in future benefits shall terminate upon her  
6 death.

7 **14. CONSTRUCTIVE RECEIPT:**

8 In the event that the Plan Administrator inadvertently pays to either party sums that are assigned to  
9 the other party pursuant to this Order, the party receiving the payment in error shall within thirty (30)  
10 days of receipt reimburse the other party to the extent of such payments. In no event shall the Plan  
11 Administrator be liable for payment to either party of any sum paid to the other party.

12 **15. ALTERNATE PAYEE'S TAX LIABILITY:**

13 The Alternate Payee shall include the entire taxable portion of her Alternate Payee Benefit if and  
14 when received in her gross taxable income. For purposes of sections 72 and 402(a) (9) of the Internal  
15 Revenue Code, the Alternate Payee shall be treated as the distributee of any distribution or payment  
16 made to said Alternate Payee under this Order. Said Alternate Payee's Benefit, when paid, shall not  
17 be taxable income or claimed as a deduction on the Participant's tax return.

18 **16. INTENT OF DOMESTIC RELATIONS ORDER:**

19 It is intended that this Order qualify as a Domestic Relations Order sanctioned by the Supreme  
20 Judicial Court, Contributory Retirement Board o(Arlington v. Mangiacotti, 406 Mass. 184(1989),  
21 and the provisions of this Order shall be interpreted and complied with in a manner consistent  
22 therewith.

23 **17. PARTICIPANT/ALTERNATE PAYEE NAME, ADDRESS OR MARITAL STATUS**  
24 **CHANGES:**

25 The parties shall be required to notify the Plan Administrator in writing of any change to their legal  
26 name, address or marital status.

27 **18. JURISDICTIONS AND MODIFICATION:**

28 The Court retains jurisdiction over this matter to amend this Order to establish or maintain its status  
as a Domestic Relations Order sanctioned by the Supreme Judicial Court, Contributory Retirement of  
Arlington v. Mangiacotti, 406 Mass. 184(1989), and pursuant to M.G.L. Chapter 32, M.G.L. Chapter

1 208, Section 34, and in light of any subsequent legislation or appellate court ruling. In the event this  
2 Order is held not to be a Domestic Relations Order sanctioned by the Supreme Judicial Court,  
3 Contributory Retirement Board of Arlington v. Mangiacotti, 406 Mass. 184(1989), the parties hereby  
4 agree to submit to and request the Probate Court to make it a Domestic Relations Order sanctioned  
5 by the Supreme Judicial Court, Contributory Retirement Board of Arlington v. Mangiacotti, 406  
6 Mass. 184(1989) in such a manner that will reflect the parties' intent as herein expressed and  
7 thereafter to enter an Order modifying the Domestic Relations Order entered by the Court, said  
8 Modification Order to be entered nunc pro tunc, if appropriate.

9  
10 **SO ORDERED**

11 [date]

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14 \_\_\_\_\_  
15 Justice,  
16 Probate and Family Court Department  
17 [County] Division  
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