

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

Sample Domestic Relations Order

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>

Appendix B

Sample Domestic Relations Order

For a Domestic Relations Order regarding a member's HCRS benefits to be enforceable, it must be accepted by the HCRS. Although you do have some leeway in drafting such an order, remember that we cannot approve an order that does not comply with M.G.L. c. 32. Accordingly, if you wish to include any unusual provisions in your DRO, it is vital that you first consult with us to be sure that we can accept them.

What follows is a sample domestic relations order for an active member (the plaintiff) who agrees to select Option C at retirement and divide his pension with his former spouse according to a specific percentage. Where appropriate, we have included explanations and comments directly after the text that they relate to. Brackets indicate general variable information which will be different depending upon your particular case.

The following is only an example and, except where noted, can be altered. You are not required to use the percentages or amounts reflected in this example. You should consult with an attorney who can draft a DRO that is appropriate for you.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

[Hampshire] Division		Docket No. [00000]
[John T. Plaintiff],)	
Plaintiff)	
)	
v.)	DOMESTIC RELATIONS ORDER
)	
[Mary T. Defendant],)	
Defendant)	

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

◇The opening paragraph contains the standard statutory language, citing the appropriate caselaw and provisions of Chapter 208. This paragraph should not be altered or amended.

1. DEFINITIONS

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

- a. ***Retirement Plan*** shall refer to the Hampshire County Retirement System (M.G.L. Chapter 32);

- b. **Plan Administrator** shall refer to the Hampshire County Retirement System, 99 Industrial Drive, Northampton, MA 01060;
- c. **Participant** shall refer to [John T. Plaintiff, 1 Litigation Drive, Boston, Massachusetts 02111; Social Security number 000-00-0000; date of birth January 1, 1970];
 - ◇ The Participant is the plan participant whose retirement benefit is the subject of the Order.
- d. **Alternate Payee** shall refer to [Mary T. Defendant, 1 Litigation Drive, Boston, Massachusetts 01111; Social Security number 000-00-0000; date of birth January 1, 1971];
 - ◇ The Alternate Payee is usually the spouse of plan participant who will be receiving a share of the retirement benefit.
- e. **Alternate Payee's Benefit** shall refer to the separate benefit to be established and administered for the Alternate Payee pursuant to paragraph 3 or paragraph 8 of this Order.

2. ALLOCATION AND OPTION SELECTION OF PARTICIPANT'S RETIREMENT BENEFIT

The Plan Administrator is advised that the Alternate Payee and the Participant have agreed on allocating the retirement benefit of the Participant under the Retirement Plan which had accrued as of [agreed upon date]. At the time of his/her retirement, the Participant may elect to receive his/her retirement benefit under any payment Option offered by the Retirement Plan, subject to the conditions given in paragraph 5 of this Order.

◇ It is not necessary that parties agree to a option selection. However, if they do it should be stated in this paragraph. For example: instead of "the Participant may elect to receive...under any payment Option" , it should be stated that "the Participant has agreed to elect Option B (or C)".

An Alternate Payee can only be designated as a Option C beneficiary if he/she remains unmarried at the Participant's date of retirement. If Option C is agreed to, there should be an alternative agreement stipulated in the event the Alternate Payee remarries.

If an option selection is to be designated, it needs to be consistent throughout the Order. There also needs to be additional paragraphs to stipulate "PARTICIPANT'S INTENT TO DESIGNATE THE ALTERNATE PAYEE AS HIS OR HER BENEFICIARY OF RETIREE SURVIVOR BENEFITS"

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 of this Order, commencing at the Participant's actual retirement date and continuing while both parties are alive. This is an assignment of the Participant's interest pursuant to M.G.L. c. 32, §19.

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

4. PAYMENT OF BENEFITS BY PLAN ADMINISTRATOR

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

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

5. DETERMINATION OF ALTERNATE PAYEE'S BENEFIT

The Alternate Payee's Benefit shall be equal to [XX]% of the marital portion of the Participant's benefit commencing at the time of the Participant's actual retirement. The marital portion of the

Participant's benefit is the benefit which the Participant would have received at [his/her] actual retirement date in the absence of this Order, determined using [his/her] highest consecutive three-year average salary at [his/her] actual retirement date and using the benefit percentage specified in the Retirement Plan for the age at which the Participant actually retires and commences receiving [his/her] benefit, but using only [his/her] credited service under the Retirement Plan through [agreed upon date].

As previously stated in paragraph 3 of this Order, at the time of his/her retirement, the Participant may elect to receive his/her retirement benefit under any payment Option offered by the Retirement Plan, subject to the conditions given in paragraph 8 of this Order. If, at the time of his/her retirement, the Participant elects to receive his/her retirement under Option C (or Option B) of the Retirement Plan, and also, at the time of his/her retirement, names the Alternate Payee as the sole Option C (or Option B) survivor beneficiary, the benefit assigned to the Alternate Payee shall be reduced to reflect the entire cost of selecting Option C (or Option B) rather than Option A, pursuant to Paragraph 8 of this Order. The "cost" of Option C (or Option B) shall be defined as the difference between the monthly benefit under the elected option and what the monthly benefit would have been under Option A.

If, however, at the time of his/her retirement, the Participant elects to receive his/her retirement benefit under Option C (or Option B) of the Retirement Plan, and also, at the time of his/her retirement, names anyone other than the Alternate Payee as the sole Option C (or Option B) survivor (or beneficiary), the benefit assigned to the Participant shall be reduced to reflect the entire cost of selecting Option C (or Option B) rather than Option A.

◇ This paragraph allows the parties to designate the percentage to be received by the Alternate Payee as of a specific date. This date should be the same as stated in paragraph 2 and remain consistent throughout the Order. The sample language of the Order uses a common formula in determining the marital portion to be awarded to the Alternate Payee. The parties, however, have the flexibility of establishing their own formula or, if the member is retired, they can simply state a specific dollar amount or percentage to be awarded at the time of divorce. We strongly suggest that if you plan on deviating from the sample formula that you consult the Legal Unit of the HCRS to ensure that your particular formula can be implemented in compliance with the Retirement Plan. 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. As in the example above, the formula for determining the "Marital Portion" can be based on factors, such as age and salary, that are determined after the date of retirement.

◇ If, at the time of processing the Participant's application for retirement, the HCRS finds that the Participant failed to select the specific court-ordered option, we will stop processing the application and notify all parties.

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

In the event that the Participant receives a disability benefit from the Hampshire County Retirement Board, due to either accidental or ordinary disability, the Alternate Payee's Benefit shall be equal to [XX]% of the marital portion of the Participant's disability benefit commencing at the time of the Participant's disability retirement. For purposes of ordinary or accidental disability, the marital portion shall mean a fraction, the numerator of which is the Participant's number of years and months of credited service through [agreed upon date], and the denominator of which shall be the Participant's total number of years and months of service through the date of [his/her] disability.

However, for purposes of determining the portion of the accidental disability benefit payable to the Alternate Payee, such fraction shall be applied only to the amount of disability benefit which would have been payable for ordinary disability rather than the actual amount payable for accidental disability; the Participant shall retain 100% of the excess of the amount of the accidental disability benefit over the amount of the benefit which would have been payable for ordinary disability.

◇ Benefit amounts allowed in accidental and ordinary disability cases are calculated differently from regular retirement allowances; accordingly, if the Participant does ultimately retire under a disability allowance, it is necessary to offer an alternative formula to that presented in paragraph 5.

The provisions for ordinary and accidental disability benefit allowances are described in detail in Sections 6 and 7 of M.G.L. c. 32. This paragraph allows the parties to designate how the benefit would be apportioned in the event that the Participant is retired on the basis of either accidental or ordinary disability.

While this paragraph is not mandatory, it is helpful in avoiding future complications if the Participant does eventually receive a disability allowance. If no provisions are made for dividing a disability allowance, the Board will not be able to implement the Order and the parties will be required to seek clarification from the Court regarding the division of the allowance.

Again, the formula offered in this sample is a common one, defining the marital portion and awarding a percentage of that portion to the Alternate Payee.

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.

7. ALLOCATION OF PARTICIPANT'S ANNUITY SAVINGS ACCOUNT REFUND, IF ANY

In the event the Participant elects to receive a return of [his/her] accumulated contributions and interest prior to [his/her] retirement or death, the Alternate Payee's benefit shall equal [XX]% of the Participant's balance which had accrued as of [agreed upon date], commencing at the time the distribution is made to the Participant.

◇ This paragraph allows the parties to award a portion of the member's annuity savings account to the Alternate Payee in the event that the Participant does not retire and elects to receive a return of his or her accumulated contributions and interest. While this paragraph is not mandatory, it does protect the interests of the Alternate Payee.

If and when the Participant either applies for retirement benefits or requests a refund of his or her annuity savings account balance, the HCRS will attempt to notify the Alternate Payee of the Participant's action. Accordingly, it is extremely important that the Alternate Payee keep the HCRS informed of his or her current address.

8. PARTICIPANT'S INTENT TO DESIGNATE THE ALTERNATE PAYEE AS HIS OR HER BENEFICIARY OF ACTIVE SURVIVOR BENEFITS

In the event that the Participant should die prior to retiring and receiving [his/her] retirement benefit, the Participant hereby agrees to designate the Alternate Payee as the beneficiary for a death benefit pursuant to M.G.L. Chapter 32, Section 12(2)(d), provided that the Alternate Payee is living and has not remarried at the time of the Participant's death. Such death benefit is to be payable to the Alternate Payee. The Participant and Alternate Payee acknowledge that if the Participant remarries, the surviving spouse may have a statutory right to elect a member-survivor allowance that will supersede the Alternate Payee's rights under this paragraph. In the alternative, in the event the Alternate Payee becomes ineligible to receive the death benefit provided in Section 12(2)(d) by virtue of [his/her] remarriage, the Alternate Payee shall receive [XX]% of the Participant's contributions through [agreed upon date] together with the interest credited on such contributions through the date of the Participant's death. The Participant is further required to designate the Alternate Payee as the beneficiary on the prescribed form issued by the Hampshire

County Retirement Board. The designation of the Alternate Payee as the beneficiary shall be continued and maintained in full force and effect during [his/her] lifetime, or until the commencement of benefit payments to both the Participant and the Alternate Payee upon the retirement of the Participant.

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

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

In effect, designation of the Alternate Payee as the 12(2)(d) member-survivor beneficiary or the 11(2)(c) lump-sum beneficiary will only be implemented if the Participant has not remarried at the time of the Participant's death.

Again, if the Alternate Payee is to be named as the beneficiary under any option, the order should compel the Participant to designate the Alternate Payee as such on a form prescribed by the Board. **Naming** the Alternate Payee as beneficiary in the Order does not meet the statutory requirement for designating a beneficiary.

9. ACTIONS NOT REQUIRED OF PLAN ADMINISTRATOR

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

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

10. ALTERNATE PAYEE'S RIGHT TO COST OF LIVING ADJUSTMENTS, IF ANY

The Alternate Payee shall be entitled to receive a pro rata share of any subsequent cost-of-living increases which may be granted on benefits which are in pay status.

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

11. ALTERNATE PAYEE'S TAX LIABILITY

The Alternate Payee shall include all of the taxable portion of [his/her] Alternate Payee Benefit, if and when received, in [his/her] gross taxable income. For purposes of sections 72 and 402(a)(9) of the Internal Revenue Code, the Alternate Payee shall be treated as the distributee of any distribution or payment made to said Alternate Payee under this Order. Said Alternate Payee's

Benefit when paid, shall not be declared as taxable income or claimed as a deduction on the Participant's tax return.

◇ This paragraph identifies the tax benefits and burdens of the parties.

12. CONSTRUCTIVE RECEIPT

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

13. INTENT OF DOMESTIC RELATIONS ORDER

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

14. JURISDICTION AND MODIFICATION

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 Board of Arlington v. Mangiacotti*, 406 Mass. 184 (1989), and pursuant to M.G.L. Chapter 32, Section 19, and in light of any subsequent legislation or appellate court ruling. In the event this Order is held not to be a Domestic Relations Order sanctioned by the Supreme Judicial Court, *Contributory Retirement Board of Arlington v. Mangiacotti*, 406 Mass. 184 (1989), the parties hereby agree to submit to and request the Probate Court to make it a Domestic Relations Order sanctioned by the Supreme Judicial Court, *Contributory Retirement Board of Arlington v. Mangiacotti*, 406 Mass. 184 (1989) in such a manner that will reflect the parties' intent as herein expressed and thereafter to enter an Order modifying the Domestic Relations Order entered by the Court, said modification Order to be entered *nunc pro tunc* if appropriate.

SO ORDERED

Dated _____

Justice,

Probate and Family Court Department

[Hampshire] Division