

MUNICIPAL FIRE & POLICE RETIREMENT SYSTEM OF IOWA

*phone: (515) 254-9200
fax: (515) 254-9300
toll free: (888) 254-9200
e-mail: pensions@mfpri.org*

7155 Lake Drive Suite 201, West Des Moines, IA 50266 web site: www.mfpri.org

MEMORANDUM

TO: Interested Individuals
RE: Domestic Relations Orders
DATE: December 1, 2011

BACKGROUND

As a governmental plan, the System is not subject to either ERISA or the qualified domestic relations order (QDRO) rules of the Internal Revenue Code. Iowa Code section 411.13 generally provides that benefits under the chapter are exempt from execution, garnishment and attachment, and are unassignable. In a 1993 dissolution action, the Iowa Supreme Court noted that the QDRO rules are inapplicable to the System, but ruled that the member's 411 benefit was still property subject to division and ordered that a portion of the benefit be paid to the ex-spouse. See *Branstetter v. Branstetter*, 508 N.W.2d 638 (Iowa 1993). In 1996, the Iowa legislature amended Iowa Code § 411.13 to specifically provide for such divisions. That section now provides as follows:

“The right of any person to a pension, annuity, or retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or death benefit, any other right accrued or accruing to any person under this chapter, and the moneys in the fire and police retirement fund created under this chapter, are not subject to execution, garnishment, attachment, or any other process whatsoever, and are unassignable except for the purposes of enforcing child, spousal, or medical support obligations or marital property orders, or as otherwise specifically provided in this chapter. For the purposes of enforcing child, spousal, or medical support obligations, the garnishment or attachment of or the execution against compensation due a person under this chapter shall not exceed the amount specified in 15 U.S.C. § 1673(b)”.

Following the *Branstetter* case, the System adopted an administrative rule for use in determining whether a domestic relations order relating to benefits under chapter 411 can be effectuated. For purposes of the rule, such orders are referred to as "marital property orders." The 1996 legislation is consistent with the System's rule, which remains valid and effective. A model Marital Property Order is attached for your reference, along with a copy of the System's Administrative Rule 12.10 on this subject.

MODEL MARITAL PROPERTY ORDER

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

NO. _____

MARITAL PROPERTY ORDER

NOW on this ____ day of _____, 20____, this matter comes before the Court upon the Court's own motion. The Court, having reviewed the file, heard the statements of counsel, and being otherwise fully advised in the premises FINDS as follows:

1. The Court has jurisdiction over the parties and the subject matter.
2. The Petitioner and the Respondent were granted a Decree of Dissolution of Marriage on **[date]**. That decree, inter alia, dissolved the marriage between the parties but reserved jurisdiction over the technical means by which (insert member's name)'s benefits from the Municipal Fire and Police Retirement System of Iowa ("System") were to be divided.
3. **(Member's Name)** _____, born on _____, hereinafter referred to as "MEMBER" is/was employed by the **[City]** _____ Fire (or) Police Department and is a participant in the retirement plan of the System under Chapter 411 of the Code of Iowa. Member's current address is: _____.
4. **(ex-spouse's full name)** _____, was born on _____, and is hereinafter referred to as "ALTERNATE PAYEE." Alternate payee's current address is: _____.
5. The parties have presented this order to the Court for approval.
6. After review of the file and being otherwise fully advised in the premises, the Court finds that the terms of this document should be approved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. AWARD OF BENEFITS: RETIREMENT OF MEMBER

The Alternate Payee is awarded a percentage or dollar amount of the monthly pension from the System to which the Member is otherwise entitled: **(stipulate either dollar amount or percentage)**

a) **dollar amount to which the Alternate Payee is eligible:** \$ _____

(or)

b) **percentage to which the Alternate Payee is eligible:** _____ % of the pension from the System that the Member would otherwise be entitled to as of [Date] _____.

The Alternate Payee **shall (or) shall not** be entitled to a proportionate share of any increases in the Member's pension following the Member's retirement.

2. AWARD OF DROP

The Alternate Payee is awarded a percentage or dollar amount of any Deferred Retirement Option Plan ("DROP") distribution from the System to which the Member may otherwise be entitled: **(stipulate either dollar amount or percentage)**

a) **dollar amount to which the Alternate Payee is eligible** \$ _____,

(or)

b) **percentage to which the Alternate Payee is eligible:** _____ %

(OR)

The Alternate Payee is **not entitled** to any portion of the DROP distribution to which the Member may be entitled.

3. COMMENCEMENT OF BENEFITS

The monthly benefit payments to be made to the Alternate Payee shall commence effective with the date of commencement of the Member's monthly benefit from the System **or effective** _____ **(if later)**. Benefits shall be paid by the System to the Alternate Payee in monthly installments, and shall continue until the earlier of the death of the Member or the death of the Alternate Payee. [a shorter period may be specified.]

4. AWARD OF BENEFITS: DEATH OF A MEMBER IN SERVICE

The Member hereby designates the Alternate Payee as a surviving spouse. In this respect, in the event the Member dies prior to receiving a pension from the System and predeceases the Alternate Payee, the Alternate Payee shall be entitled to a survivor benefit for the remainder of his/her lifetime which is equal to _____%. (or) the following identified dollar amount \$_____ of the surviving spouse benefit that is otherwise payable upon the member's death. Any remaining percentage or dollar amount shall be payable to the Member's then-current surviving spouse, if any.

The Alternate Payee **shall (or) shall not** be entitled to a proportionate share of any increases in the survivor benefit following the Member's death.

5. AWARD OF BENEFITS: DEATH OF A MEMBER AFTER RETIREMENT

The Member hereby **designates (or) does not designate** the Alternate Payee as the surviving spouse for purposes of the pension to the spouse of a deceased member who was receiving benefits, under § 411.6(11). The Alternate Payee shall be entitled to _____% of the spousal pension otherwise payable under this section. The Alternate Payee **shall (or) shall not** be entitled to a proportionate share of any increases in the survivor benefit following the Member's death.

[This paragraph does not apply if the Member received an optional form of benefit under § 411.6A.]

6. AWARD OF DROP: DEATH OF MEMBER DURING DROP

The Member hereby **designates (or) does not designate** the Alternate Payee as the designated beneficiary for the member's DROP account. In this respect, in the event the Member predeceases the Alternate Payee, the Alternate Payee shall be entitled to a lump sum payment from the DROP account which is equal to _____% (or) 0% of the DROP distribution available to the member as of the date of the member's death. (Distribution available to the member equals the accrued DROP account balance less amount awarded to the Alternate Payee in Paragrah #2.)

7. AWARD OF REFUND OF CONTRIBUTIONS

In the event the Member withdraws his/her contributions pursuant to Section 411.23 of the Code of Iowa, the portion of such withdrawal payable by the System to the Alternate Payee shall be _____ %.

(or)

The Member may not withdraw his/her contributions under Section 411.23 of the Code of Iowa.

8. THE PARTIES ACKNOWLEDGE THAT THIS ORDER SHALL NOT:

- (a) require the system to provide any type or form of benefit or any option not otherwise provided by the system;
- (b) require the system to provide increased benefits over what would otherwise be payable on the Member's record, as determined on the basis of actuarial value;
- (c) require the system to provide benefits at a time otherwise not permitted under Chapter 411;
- (d) require the payment of benefits to the Alternate Payee to the extent that they are already required to be paid to another alternate payee under a previous marital property order;
- (e) permit the alternate payee to designate a beneficiary. In the event the Alternate Payee predeceases the Member, the Alternate Payee's portion of the monthly benefit will revert to the Member; and
- (f) permit payment to the Alternate Payee following the death of the member, except as provided in this Order and by statute.
- (g) permit the recalculation of the surviving spouse benefit following the death of any surviving spouse.

9. DISTRIBUTION OF ORDER

The Court directs that a copy of this Order be sent by _____'s counsel by regular mail to the System, *along with a cover letter that includes the social security numbers and current addresses and phone numbers of both the Member and the Alternate Payee.* Within a reasonable time after a receipt of a copy of this Order, the System shall determine whether the Order may be effectuated and shall notify the Member and the Alternate Payee of such determination.

10. RETENTION OF JURISDICTION

It is further ordered that the Court shall retain jurisdiction over this matter to amend this Order as necessary in order to establish or maintain a Marital Property Order acceptable to the System.

Judge, _____ Judicial District of Iowa

APPROVED AS TO FORM AND CONTENT:

SAMPLE

12.10 Marital Property Orders. The System is not subject to the Qualified Domestic Relations Order (QDRO) provisions of the Internal Revenue Code, but will recognize a valid domestic relations order relating to the division of marital property (including the member's accrued benefit under the chapter) in a dissolution action. Such orders shall hereinafter be referred to as "Marital Property Orders." The System shall review all Marital Property Orders presented and shall inform both the member and the alternate payee (or their representatives) within a reasonable time whether or not such order is valid. Valid orders shall be effectuated by the System. A Marital Property Order must comply with the following requirements in order to be valid and enforceable:

12.10(1) *Facts required in order:*

- (a) The name and last known mailing address (if any) of the member and the name and mailing address of the alternate payee;
- (b) The dollar amount or percentage of the member's benefits to be paid by the system to the alternate payee. In the alternative, the order may specify a formula, such as the following: one-half of the amount determined by a formula, the numerator of which is the number of years the member contributed to the plan during the marriage, and the denominator of which is the total number of years the member contributed to the plan prior to drawing benefits; and
- (c) The number of payments or period to which such order applies. The period may not exceed the lifetime of the member;
- (d) Extent (if any) to which former spouse is to be treated as the surviving spouse upon the death of the member. See subrule 12.10(3), below.
- (e) Effect in the event of an application by the member to withdraw the member's contributions pursuant to Iowa Code § 411.23.

12.10(2) *Order may not alter benefit*

- (a) May not require the system to provide any type or form of benefit or any option not otherwise provided by the system;
- (b) May not require the system to provide increased benefits over what would otherwise be payable on the member's record, as determined on the basis of actuarial value;
- (c) May not require the system to provide benefits at a time otherwise not permitted under the chapter;
- (d) May not require the payment of benefits to an alternate payee to the extent that they are already required to be paid to another alternate payee under a previous marital property order;
- (e) May not permit the alternate payee to designate a beneficiary. In the event the alternate payee predeceases the member, the alternate payee's portion of the monthly benefit will revert to the member; and
- (f) May not permit payment to the alternate payee following the death of the member, except as provided in C. below.

12.10(3) *Treatment of former spouse as surviving spouse*

- (a) A former spouse shall be treated as a surviving spouse only if specifically designated as such pursuant to section 411.1(19).
- (b) If the former spouse is designated as a surviving spouse, the dissolution of marriage decree shall state the dollar amount or percentage of the total surviving spouse benefit to be paid by the system to the former spouse.
- (c) The designation of a former spouse as the surviving spouse prior to the member's retirement precludes the election of an optional retirement benefit under section 411.6A by the member upon retirement.

This rule is intended to implement the decision of the Iowa Supreme Court in Branstetter v. Branstetter, 508 N.W.2d 638 (Iowa 1993).