



SUFFOLK ACADEMY OF LAW
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ISSUES IN PREPARING STIPULATIONS FOR QUALIFYING DOMESTIC RELATIONS ORDERS

Faculty

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Domestic Relation Orders (DRO) and Qualified Domestic Relation Orders (QDRO)

A **DRO** provides for the payment of all of or a share of one party's pension or other form of retirement benefit to the other party in a divorce action and is used to provide for provision of child support, alimony (maintenance), payment of marital property rights (equitable distribution) to a spouse, former spouse, or other dependent of a plan participant.

A **QDRO** is a state court issued domestic relations order that relates to a pension or other retirement benefit established under the provisions of the Employee Retirement Income Security Act of 1974 (ERISA).

The plan administrator determines whether a DRO is qualified. Even though the DRO is a court order signed by a judge, it is not considered qualified until the plan administrator approves it. The divorce attorney's job is not done until the plan administrator approves the QDRO. Document when the QDRO was officially approved by the company and obtain a copy of the company's approval letter.

The spouse or former spouse who is the holder of the retirement plan is routinely referred to as the participant, member, or employee.

The spouse or former spouse who receives an interest in the other spouse's or former spouse's retirement benefit is routinely referred to as the alternate payee, member's spouse or former spouse.

Must first determine whether QDRO is for a defined benefit plan or a defined contribution plan.

- i. **Defined Benefit Pension Plan** is one in which a participant's benefits accrue each year based on a specific plan formula that typically incorporates the participant's average salary and years of service with the company. The pension plan is merely a promise to provide a lifetime pension. Example - N.Y.C. Police Department Pension Plan. In such a plan, a QDRO should never refer to account balance or amounts determined as of a particular valuation date.
- ii. **Defined Contribution Plan** is one in which plan assets are maintained under individual participant's accounts. Example - N.Y.C. Police Department Annuity Fund. In such a plan, a QDRO would refer to a participant's total account balance under the plan as of a particular date, usually the cut off date used by the court to determine what constitutes marital assets (commencement of divorce action or date of separation agreement). The QDRO should provide that the alternate payee be accountable for his or her own interest and investment gains/losses attributable to the alternate payee's

assigned share of the account balance from the particular date used until the date of distribution of the account.

QDRO cannot simply state that such order applies to all benefit plans under which an employee is a participant. It must specifically state the name(s) of the various plan(s) in question.

For Defined Benefit Plans:

Growth (inflationary) protection for the alternate payee through the use of a coverture based formula.

- b. Coverture Approach as provided for by Court of Appeals in **Majauskas v Majauskas**, 61 N.Y.2d 481, 474 N.Y.S. 2d 699 (1984) - “. . . plaintiff is directed, upon his retirement, to pay to the defendant one half of a percentage of the amount of each pension benefit payable to him, less taxes, that percentage to be derived by dividing the number of months the parties had been married before the commencement of the action (which number is ____) by the total number of months of credits the plaintiff will have earned toward his pension as of the date of retirement . . .”.
 - c. **Numerator** (number of years of service earned under the plan by the participant while married up to the applicable cut off date)
OVER
Denominator (represents all of the participant’s years of service at retirement)
 - d. This ever decreasing coverture fraction is applied to a larger pension as the participant’s accrued benefit continues to grow. In essence, with each passing year after divorce, the alternate payee is earning a smaller percentage of a larger pie.
2. Survivorship protection to assure the alternate payee a lifetime of benefits regardless of whether the participant dies before or after retirement.

For **Defined Contribution Plans** such as 401(k) plans:

- i. The specific percentage or dollar amount payable to the alternate payee;
- ii. The effective date of assignment;
- iii. A statement regarding the pro rata allocation of benefits among the various accounts maintained on behalf of the participant;
- iv. Gains/losses to be applied to alternate payee’s share of the benefits for periods subsequent to the effective date of assignment until the date of distribution;
- v. A statement that contributions made to the plan after the effective date of assignment, but that are attributable to periods before such date, should be incorporated into calculation of alternate payee’s share of the benefits;
- vi. Effect of previous loans taken by participant, if any;
- vii. Survivorship protection for the alternate payee in the event of the death of the

- participant;
- viii. Provision for benefits to beneficiary of alternate payee in the event of his or her death before receipt of benefits;
- ix. Continued jurisdiction of the court;
- x. Constructive receipt language in the event the plan administrator inadvertently pays benefits to participant rather than the alternate payee;
- xi. Anti-circumvention language preventing participant from taking any actions to the detriment of the alternate payee; and
- xii. Effect of plan termination, either voluntarily or involuntarily and participant's benefits become guaranteed by the Pension Benefit Guarantee Corp. (PBGC). Provide for alternate payee to receive his or her pro rata share of the guaranteed benefit.

An IRA is not an ERISA governed retirement program and therefore does not require a QDRO for purpose of dividing participant's IRA account. If plan administrator wants a QDRO do it even though not really required.

ARTHUR E. SHULMAN, ESQ.

RESUME

BACKGROUND

Arthur E. Shulman is a sole practitioner in his own firm located in Islandia, New York, and is a resident of Smithtown.

PROFESSIONAL BIOGRAPHY

Education: Brooklyn Law School, J.D., 1973
City College of New York, B.A., 1968
(President of Alpha Phi Omega, National Service Fraternity)
(President of Dean 65 - House Plan Association)
Stuyvesant High School, 1961

Bar Admissions: New York State Bar, 1974
Eastern District Federal Court, 1975
Southern District Federal Court, 1975
United States Supreme Court, 1999
Court of Federal Claims, 1999
Court of Appeals for the Federal Circuit, 1999
Court of Appeals for the Armed Forces, 1999

Professional Associations: **Suffolk County Bar Association & following committees thereof:**
Past President SCBA 2012-2013
SCBA Board of Directors for years 2001-2004 & 2007- Present
SCBA Nominating Committee Member - Term 2013 - 2016
Former Co-Chairman of SCBA Grievance Committee 2004-2007
Former Chairman Bench Bar Committee 6/2011 - 5/2012
Appointed as SCBA Representative to Suffolk County Legislature Task Force To Increase Minority Hiring in S.C.P.D.
Former SCBA Judicial Screening Committee 6/05-5/07
SCBA Director's Award - June 2004
SCBA Delegate to NYSBA House of Delegates 6/03-5/07 and 6/10-5/14
Former Chairman of District Court Sitting Arbitrators' Committee 6/04-5/05
Current Member of the Professional Ethics Committee
Current Member of the Matrimonial & Family Law Committee
Current Member of the Family Court Committee
Current Member of the Surrogate's Court Committee
Current Member of the Commercial & Corporate Law Committee
Current Member of the District Court Committee
Current Member of the Real Estate Committee
Former Co-Chairman Committee To Protect The Public From the Unlawful Practice of Law (6/98 - To 5/01)

New York State Bar Association & following committees thereof:

Alternate Delegate to NYSBA Nominating Committee 6/12-5/14

Former member of

NYSBA Mandatory Continuing Education Committee 6/05-5/10

Alternate Delegate and Delegate to the NYSBA House of Delegates
6/03-5/07 and from 6/10-5/14

Current Member of the Family Law Committee

Suffolk Academy of Law -

Academy Officer from 6/14 to present

Secretary of Academy from 6/14 to present

Current Member of following committees thereof:

Curriculum Committee 6/97 - present

Trial Advocacy Committee

Coordinator and/or faculty for approximately 90 academy seminars

Former Positions Held in Suffolk Academy of Law:

Dean of the Academy of Law 6/01-5/03

Chairman of Academy Advisory Committee 6/03-5/05

Former Member of the Academy Advisory Committee for the year 2003-2014

Academy Officer 6/97-5/01

Associate Dean 6/00 -5/01

Treasurer 6/98 -5/00

Budget Committee (Chairman) 6/98 - 5/00

Appointed Member of the

Tenth Judicial District Independent Judicial Screening Committee

Member of the Suffolk County Matrimonial Bar Association

Other Experience:

Suffolk County District Court Arbitration Program, Arbitrator 1988 - Present

New York City Police Department 2/9/68 - 2/8/88

(1988 - Retired at the rank of Lieutenant)

Issues in Preparing Stipulations for Qualified Domestic Orders (QDROs)

Suffolk Academy of Law
Suffolk County Bar Association

May 5, 2015

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Pension Valuations

When pension assets exist in a marriage, the portion of these benefits which were accumulated during the marriage are considered marital assets, and therefore, are subject to equitable distribution.

Replacing Lost Benefits

In matrimonial actions, the basic logic behind the need for determining the present value of an individual's accrued pension benefit is to determine the replacement cost of that benefit. While the parties were married, there was an expectation that they would share in this benefit at retirement. Now, upon divorce, since marital assets must be distributed equitably between the parties, there is a need to determine the value of each of these assets, including the replacement cost of the pension benefit. Once the values of all assets are determined, the parties can offset the values of these assets so that they are distributed equitably.

Determining Present Value

When calculating the present value of pension benefits, many factors affect the ultimate determination of this value. In general, if a person is young, has many years of deferral until the commencement of pension benefits and the payments begin at a later age, such as age 65, these factors will result in a lower present value.

Conversely, if the person is close to retirement age and can begin collection of benefits at a relatively young age (such as a 40 year old police officer with 18 years of service and a 20 year retirement), the value would tend to be higher because the payments commence earlier and continue for many more years.

The other major factor in determining the value is the choice of an interest rate assumption. Our firm currently uses the interest rates as published by the Internal Revenue Service (IRC) under Section 7520. Under IRC Section 7520, the interest rate to be used for valuing annuities, life interest, etc. is based on the applicable Treasury Department rate for the month in which the valuation date occurs. No actuarial deviations were made.

Qualified Domestic Relations Orders (QDRO) - Simplified

HISTORY IN A NUTSHELL -- In 1974 Congress passed the Employees Retirement Income Security Act (ERISA). This act defined, clarified, standardized and protected employees' rights to pension benefits. It also stated that pension benefits were "non-assignable", thereby shielding these pension benefits from all creditors. Realizing that there was an inequity concerning the marital property rights of spouses and former spouses, in 1984 Congress passed the Retirement Equity Act (REA). QDROs were established and defined under Section 414(p) of this Act.

It is important to note that this Act only pertains to "Qualified" employer pension plans and does not cover "governmental plans". This Act defined the rights of spouses, former spouses and dependents, and stated that pension benefits could be assigned pursuant to a "Qualified Domestic Relations Order" (QDRO). As defined under the REA, a "Qualified Domestic Relations Order" (QDRO) means a domestic relations order which "creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee, the right to receive all or a portion of the benefits payable with respect to a participant under the plan".

GENERAL ERISA PLAN GUIDELINES -- The spouse, former spouse or dependent of the plan participant is known as the alternate payee. Under the Act the alternate payee is entitled to certain benefits, some of which are as follows: Under Defined Benefit plans the alternate payee would be entitled to a portion of the accrued pension benefit for his/her lifetime, beginning at the participant's normal retirement date or earliest retirement date (with an actuarial reduction), whether or not the participant had actually retired.

The payments would be made as a life annuity to the alternate payee and he/she would even be entitled to choose a payment option which would provide death benefit payment to a beneficiary of their choice (other than a joint & survivor annuity with a new spouse). Should the participant die prior to attaining retirement eligibility, the alternate payee retains a pro-rata share of any pre-retirement survivorship rights.

NON-ERISA GOVERNMENTAL PLANS -- ERISA was established to regulate employer pension plans. The Act specifically excluded "governmental plans" which include all municipal, state and federal plans (including railroad plans). Consequently, former spouses do not enjoy the same rights or benefits under these plans. There are two significant differences between ERISA and governmental plans. The first being that, under a governmental plan, the alternate payee cannot begin collection of his/her portion of the benefits until the participant actually retires. And the second being that payments to the alternate payee will be made only for the lifetime of the participant, unless there are specific provisions in the agreement that provide for death benefits to the alternate payee.

In order to provide lifetime protection to the alternate payee, the participant must choose a death benefit option which will provide such protection. Remaining silent on this issue would allow the participant to choose an option which would cause all benefit payments to cease upon the participant's death, or worse, to provide a benefit to another beneficiary. Choosing a beneficiary that is not the former spouse would also cause a reduction to the monthly benefit to the alternate payee during the participant's lifetime. It is important to include this provision in the initial agreement.

Spouses of federal employees enjoy slightly more protection than municipal and state employees in that they are covered under the Civil Service Retirement Spouse Equity Act of 1984 and the Federal Employees Benefits Improvement Act of 1986.

PROS AND CONS OF THE VARIOUS METHODS OF PENSION DISTRIBUTION

For the purpose of this discussion, we will assume that the husband is the employed pension holder.

IMMEDIATE OFFSET OF ASSETS - PRESENT VALUE ANALYSIS

PROS

- Assets are distributed, no need for further involvement of parties.
- Each spouse has full control of his or her assets.
- Spouse can purchase a lifetime annuity with the money.
- Should spouse die, the spouse's estate receives full value of the asset.
- Distribution is not taxable.
- The participant receives an unreduced pension or he/she can choose any available option, e.g. if participant remarries he/she can provide full survivor benefits to his/her spouse.

CONS

- Immediate distribution of assets may cause financial hardship on the participant.
- Spouse will not receive a monthly retirement annuity.
- If offsetting the pension value against the value of the marital residence, the values may be inequitable. With today's low interest rates, the value of the pension will be on the high side and with today's depressed real estate market the value of the marital residence will be on the low side.
- If you know that you will have to divide the pension asset via a Domestic Relations Order, due to lack of offsetting assets, a present value analysis may not be necessary.

DEFERRED DISTRIBUTION OF PENSION ASSETS - ERISA PLANS - QDROs

PROS

- Wife receives a monthly annuity for her lifetime, beginning at the husband's retirement eligibility date. The wife may begin to receive her portion of the benefit at any time after the husband's earliest retirement date. She does not have to wait until he actually retires.
- Should the husband pre-decease the wife, she retains pre-retirement and sometimes, post-retirement survivorship rights to her pro-rata share of the death benefit.

CONS

- The wife may have to wait many years to collection. If the settlement is not structured correctly, the value of her benefit may be worth a lot less in terms of current value.
- The wife's benefit under a defined benefit plan often has no or limited survivorship rights. If she dies prior to the collection or any time after the commencement of benefits, her estate gets nothing.
- The monthly benefit may be actuarially reduced to pay both parties.

COMPARISON OF SHARED INTEREST” VERSES “SEPARATE INTEREST” METHODS

SEPARATE INTEREST

1. The Alternate Payee has the right to choose the form of benefit, other than a joint-and-survivor form with a subsequent spouse.
2. The order may designate the Alternate Payee as the Surviving Spouse for the Preretirement Surviving Spouse Pension based upon the marital portion of the Participant’s entire benefit if the Participant dies before the effective date of the Alternate Payee’s benefits. If the Participant dies after the effective date of the Alternate Payee’s benefits, the Participant’s death does not affect the Alternate Payee’s benefit.
3. The order does not need to designate the Alternate Payee as Surviving Spouse for the Post-Retirement Surviving Spouse Pension. The Alternate Payee automatically receives his/her benefit for their lifetime. The Alternate Payee may take their benefit under any optional form available under the Plan, other than a Joint and Survivor Option with a subsequent spouse.
4. If the Alternate Payee dies before the commencement of benefits to either party, the Alternate Payee’s benefit reverts to the Participant, successor Alternate Payee’s are usually not permitted.
5. If the Alternate Payee dies after the commencement of benefits, any survivor benefits payable on behalf of the Alternate Payee will be made to the Alternate Payee’s designated beneficiary.
6. The Alternate Payee’s benefit may, upon application, begin prior to the Participant’s benefit; otherwise, it will begin on the date the Participant’s benefit begins.

NOTE: THE DIVIDING METHOD CANNOT BE USED FOR PARTICIPANTS WHO ARE ALREADY IN PAY STATUS.

SHARED INTEREST

1. The Alternate Payee will receive a portion of the Participant’s benefit and cannot choose to receive a benefit in a separate form.
2. The order may designate the Alternate Payee as the Surviving Spouse for either or both the Preretirement and Post-Retirement Surviving Spouse Pensions. The order must specify which applies and for what portion of the benefit payable.
3. The order may designate the Alternate Payee as the Surviving Spouse for the Post-Retirement Surviving Spouse Pension based upon Participant’s entire benefit.
4. If the Alternate Payee dies before the commencement of benefits to either party, the Alternate Payee’s benefit reverts to the surviving Participant.
5. If the Alternate Payee dies after the commencement of benefits to either party, the Alternate Payee’s benefit reverts to the surviving Participant.
6. Alternate Payee’s benefit may be for the lesser of the life of the Participant or the Alternate Payee or for a specified time, such as remarriage or a child reaching majority.
7. The Alternate Payee’s benefit will begin on the date the Participant’s benefit begins.

NOTE: THE SHARING METHOD MAY BE USED FOR ALL PARTICIPANTS, REGARDLESS OF PAY STATUS AND MUST BE USED FOR ALL RETIRED PARTICIPANTS AND GOVERNMENTAL PLANS.

ATTORNEY'S CHECKLIST/RESPONSIBILITIES FOR RETIREMENT BENEFIT VALUATION AND QDRO DISTRIBUTION ISSUES

ATTORNEY'S RESPONSIBILITY IN VALUATION ISSUES

1. Identify All Retirement Benefit Assets.

It is important to identify and specify all retirement benefits available to each party. Try to be as specific as possible. Merely stating that the spouse is entitled to 50% of the marital portion of all of the participant's retirement benefits describes the intent, but leaves many issues unresolved. Attempt to obtain statements for each retirement asset for the appropriate valuation date, if available.

Many practitioners will wait until they are well into a case before they address the issue of distribution of retirement benefits. However, since the equitable distribution of retirement benefits can become complicated, time consuming and contentious, it is vitally important to address these matters early in the process. Many cases have been held up for years because the distribution of retirement assets has not been resolved. If you have adequately addressed these issues early in the divorce proceedings, many of the other complicating factors, such as the dissipation of assets, retirement during the proceedings (which can affect death benefit options), the death of either party, or proper determination of distribution amounts will have been addressed prior to the event.

2. Determine Marital Portion of All Retirement Assets.

Ultimately, the marital portion of each retirement asset will have to be distributed via a QDRO or offset against other assets. Often retirement assets may be distributed equitably without establishing the exact value. The parties may agree to a percentage or formula to be used by the plan administrator in calculating the marital portion. Many times however, it will be necessary to seek the services of a valuation expert to assist in determining the marital portion of retirement assets.

If there is a defined benefit plan, the expert will calculate the present value of the accrued monthly retirement annuity based upon the current age, the anticipated retirement age and the life expectancy of the participant. The marital portion of this value will be determined by dividing the years married while in the plan by the total years in the plan, up to the date of the valuation.

Valuing defined contribution type plans, such as 401(k) plans, savings and profit sharing plans is easy. Just read the statement. If the account balance has been accumulated entirely during the marriage, the parties may use the balance for the appropriate date and decide how it is to be divided. A problem arises when there was a balance in the account prior to the marriage. A typical scenario illustrating the problem goes like this: The parties were married on October 7, 2007, and at the time of the marriage, the husband was a member of his company's savings plan since October 7, 2002, with a balance of \$43,407.82. During the marriage, he continued to contribute marital money into the plan. On the date the action for divorce was commenced, August 8, 2011, the balance of the account was \$188,152.68. There are three methods commonly used to achieve the goal of determining that portion of the participant's account that accumulated during the parties' marriage, namely: the Subtraction Method; the Coverture Method; or the Tracing/Segregation Method.

Using the Subtraction Method yields a marital accumulation of \$144,286.80. The wife's half would be \$72,143.40. Using the Coverture Method yields a marital fraction of 43.44% (3.84 years married while employed, divided by 8.84 years employed, equals 43.44%). 43.44% of \$188,152.68 is \$81,733.52. The wife's half would be \$40,866.76. Both of these methods are inaccurate when being used for equitable distribution purposes. The Subtraction Method is inaccurate because it fails to attribute the investment earnings on the pre-marital balance to the pre-marital portion. The Coverture Method is inaccurate because the coverture fraction is determined by years of marriage and service, not the rate of contribution or earnings. If the participant had been employed for a longer or shorter period of time, it would have affected the coverture fraction, having no direct relationship to the actual amounts accumulated during the marriage. Unfortunately, if the records are not available, either of these two methods may be the only viable alternative.

Utilizing the Tracing Method is without a doubt, the most accurate method to determine the marital and non-marital portions of defined contribution plan accounts. This method examines the actual investment experience of the account during the whole marital period. Any earnings or losses are determined on a proportionate basis from quarter to quarter. Also, any loans or distributions which were made during the marital period can be properly accounted for. The actual marital portion of this account is \$115,362.52. The wife's half would be \$57,681.26. The original pre-marital balance of \$43,407.82 has grown to \$72,790.16. **An example of a typical Tracing Method calculation is available in this handout.**

3. Offsetting Assets.

The value of all marital assets must be determined. These may include the marital portion of retirement assets, real estate, collectables, non-retirement investments or other assets. These assets must now be offset against one another for equitable distribution. It is important to address the taxability of each asset. For example, the sale of the marital residence may be a non-taxable event, whereas profits on other assets, future pension income or 401(k) distributions will be taxed. This might be the time to seek the assistance of a tax expert. Since I am not a tax expert, the offset calculations presented here do not include non-pension assets. Included with the material are two examples of retirement benefit offset calculations ([Pension Offset Calculations – Sample 1.pdf](#) & [Pension Offset Calculations Sample 2.pdf](#)). Both calculations illustrate that the wife will be entitled to a reduced percentage of the husband's defined benefit pension. However, if there were other assets in the marriage, offsets could be made against these other assets. If it is determined that a spouse is going to be entitled to a portion of the other spouse's retirement benefits, a Qualified Domestic Relations Order (QDRO) will be necessary.

ATTORNEY'S RESPONSIBILITY IN QDRO ISSUES

1. Identify All Retirement Benefit Assets.

It is important to identify and specify all retirement benefits available to each party. Try to be as specific as possible. Merely stating that the spouse is entitled to 50% of the marital portion of all of the participant's retirement benefits describes the intent but leaves many issues unresolved. Attempt to obtain statements for each retirement asset for the appropriate valuation date, if available. If this sounds familiar, you're right; it's exactly the same responsibilities as stated in paragraph number 1 above, regarding valuation issues. You still have to identify the exact name of the plan. Many companies or multi-employer union type plans have multiple plans with similar names. These plans

may differ depending upon job title, longevity or plan options provided by the employer. Any ambiguity may cause significant problems. Some unions have a national plan and a local plan. The bottom line is that you must clearly identify ALL of the plans in which the individual may participate.

Despite the valuation issues previously discussed, in many instances, it is possible and correct to have a QDRO prepared with no valuation having been done. If the parties agree to utilize a coverture fraction formula or a specific dollar amount or percentage, that's fine, as long as everyone is comfortable with utilizing the method chosen. It is common practice to instruct defined benefit plans to calculate the marital portion by providing a coverture fraction formula. This method describes a fraction used to determine the marital portion. The numerator of the fraction is the years married while in the plan, the denominator is the total years in the plan up to the date of termination, retirement or the date of the commencement of the benefit. The resulting fraction is then multiplied by the retirement benefit accrued at that time. Some defined contribution plans will accept QDROs which instruct the plan to calculate the marital portion. If they will accept an Order which instructs them to do that, that's great because they have a fiduciary responsibility to do it correctly. Unfortunately, most plans are unwilling to accept an Order which involves lengthy calculations or historical research. Defined contribution plans usually require that you specify a specific dollar amount or percentage, as of a specific date. Most, but not all plans, will calculate investment experience from the specified division date, up to the distribution or rollover date, if requested to do so.

2. Proper Preparation of Property Settlement Agreement.

Despite the fact that this section is hidden way down here towards the bottom, this is really the most important part of the attorney's responsibility. After you've properly identified all of the retirement assets, calculated any offsets and decided what may need to be distributed via a QDRO, getting it all into the property settlement agreement is critical. There are distinct differences between Employees Retirement Income Security Act (ERISA) defined benefit plans and "Governmental" plans (municipal, state and federal plans).

For ERISA defined benefit plans, issues such as when the benefit will commence (at retirement eligibility or actual retirement), and the form of division (the differences between Separate Interest, or Shared Interest forms of benefit will be discussed in this seminar), must be specified. Additional issues which will be discussed in this seminar are pre and (sometimes) post-retirement death benefits, COLAs, loans and early retirement subsidies.

For Governmental defined benefit plans, benefits commence only upon the participant's actual retirement. Pre & post-retirement death benefits MUST be discussed. Pre-retirement death benefits are usually paid out as a lump-sum, so multiple beneficiaries are possible. Post-retirement benefits are usually payable to only one beneficiary so it is sometimes inappropriate in short term marriages. For example, if the parties were married for five years and the participant works for thirty years before retirement, the former spouse would be entitled to $5/30 * \frac{1}{2}$ which equals 8 percent of the pension. If the participant had remarried, providing this benefit to the former spouse would preclude him/her from naming the subsequent spouse as a beneficiary, even though the benefit to the former spouse is relatively small.

When dealing with defined contribution plans we have discussed most of the valuation issues and how to determine the marital portion. Now a new problem arises. If the benefit is to be divided via a

QDRO, the specific wording of how this benefit is to be divided must be in the property settlement agreement. That wording is going to guide how the QDRO is to be structured. However, the Court issues the Domestic Relations Order (DRO) and the retirement plan “Qualifies” the Order making it a QDRO. If the terms of the agreement do not conform to the rules of the plan, or what the plan is willing or able to do when complying with the Order, they will not Qualify the Order and you are back to square one. Often the plan cannot, or will not, calculate the marital portion or investment growth on the amount awarded. This is often because their records no longer go back far enough or they have changed recordkeepers during the time specified in the agreement and they cannot perform the calculations required to conform to the terms of the Order. As a general rule, it is always best to agree to a division of assets as close to the current date as possible. While this can be problematic, it is often necessary, based upon the requirement of the plan.

3. Court Judgments Relating to Retirement Assets.

Often, despite the best efforts of all involved, the issue of the equitable distribution of retirement assets cannot be resolved through negotiation. Now all relevant information must be presented to the Court, usually at a trial, and it is left to the trial judge to decide these sometimes very complicated issues. I would suggest that this avenue be avoided if possible. There are several major drawbacks to arriving at this point; it is often difficult and expensive (experts must provide testimony) to convey complicated financial issues to the trial judge; procedural issues may preclude an attorney from presenting important financial information to the Court; and lastly, while the trial judge may have complete grasp of the issues, he/she may be ill equipped to address nuances of the plan requirements as discussed in this seminar.

4. Preparation, Pre-approval, Court Certification and Qualification of the QDRO.

Now that the terms of the equitable distribution of retirement benefits has been decided, whether through negotiation or decision, the time to prepare the Domestic Relations Order(s) is at hand. This is actually a multi-step process.

Step one: you (or your QDRO preparation consultant) must prepare the draft of the DRO. As discussed, this document should accurately reflect the agreement or decree.

Step two; send this draft to the appropriate retirement plan for pre-approval. This step may be quite time consuming due to possible revisions or clarifications required by the plan or just plain old foot dragging on the part of the plan. You have to keep in mind that this process can be expensive and time consuming for the plan, so they do not place a high priority on being responsive to your needs. It should be noted that, although it is not a requirement that the DRO be pre-approved prior to submission for Court certification (some jurisdictions are now requiring proof of plan pre-approval), it is always advisable to do so. If the Court certified DRO is rejected by the plan the whole process must be repeated.

Step three: once the DRO has been pre-approved by the plan, you must submit the DRO to the Court for certification. You may also be required to serve notice upon the opposing attorney that this has been done. This will allow the opposing attorney to voice any objections to the form or content of the DRO. Assuming there are no objections from the Court or the opposing attorney the Court will certify the DRO.

Step four: retrieve the Court certified copy from the clerk and send this certified copy to the plan administrator for “Qualification”.

Don’t go out and have that celebratory drink just yet. Under federal law, the plan administrator now has 18 months to decide whether the Court certified copy of the DRO is actually a QDRO. Practically speaking it doesn’t take anywhere near that long, especially since you have had the DRO pre-approved. Unfortunately, I have seen several cases where a pre-approved draft, now a Court certified DRO, is rejected by the plan administrator. This is usually the result of a change in legal counsel at the plan (the new counsel may have more requirements or clarifications), or modifications made at the request of the Court, which inadvertently cause conflicts or contradictions in the interpretation of the DRO.

ERISA Defined Benefit Plans

A **defined benefit pension plan** is a type of in which an employer promises a specified monthly benefit on retirement that is predetermined by a formula based on the employee's earnings history, tenure of service and age, rather than depending directly on individual investment returns. Governmental and public entities, as well as a large number of corporations, provide defined benefit plans.

There are two possible methods of benefit division, the “separate interest” and the “shared interest” benefit. Usually the *separate interest* type benefit is a better choice because the alternate payee’s portion is payable at any time after the participant becomes eligible for benefits, regardless of whether or not the participant actually retires. The benefit is payable for the lifetime of the alternate payee (appropriate actuarial adjustments will be made by the plan based upon the alternate payee’s sex and age). All governmental plans use the *shared interest* method. If the participant is already in retirement payment status, you must use the shared interest method since the form of payment has already been chosen. With that in mind, we will examine property settlement language as it pertains to pensions.

What follows are specific items and areas of concern which may significantly affect the division of pension assets in a matrimonial action. These items are meant to make the matrimonial practitioner aware of these issues, so that the settlement agreement will be as complete as possible. Any ambiguity or omission in the agreement will only lead to further litigation in the future.

1. **Identification of Plan/Benefits** -- The participant represents and acknowledges that he/she maintains Pension/Retirement plans, with his/her union/employer _____, and may have pension retirement benefits with Pension Fund, Annuity Fund, Profit Sharing, etc., all, or a portion of which, are marital property.
2. **Division of Benefits** -- The alternate payee shall be entitled to a fractional portion of the participant’s pension benefits which were accumulated during the marriage. The numerator of said fraction is the total credited service or pension credits earned by the participant, from the participant's date of initial plan participation, or the date of the parties’ marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being, _____, and the denominator of which is the total period of time from the participant's date of initial participation in the plan, up to the date of the participant's retirement, termination or death, (separate interest orders only) or up to the date that the alternate payee elects to begin collection of benefits if the participant has not yet retired, terminated employment or died. This fraction shall be multiplied by 50%, then multiplied by the participant’s accrued pension benefit earned as of the date the benefits become payable to the alternate payee. This calculation is based upon the formula established in the case entitled **Majauskas v. Majauskas, 61 NY 2d 481.**

3. **Commencement of Benefits** --

Separate Interest Benefit -- Payments to the alternate payee shall commence at such time as the participant has retired from and is actually receiving a retirement benefit from the pension plan, or if the alternate payee so chooses, at the Earliest Retirement Age of the participant or at such later date thereafter as the alternate payee may elect.

Shared Interest Benefit -- Under the shared interest benefit, the former spouse cannot commence benefits until the plan participant actually retires and begins receiving benefits. Benefits are payable to the alternate payee for the lifetime of the participant. Upon the death of the alternate payee, benefits revert back to the participant. All governmental plans use the shared interest method. If the pension is in pay status at the time of the QDRO, you **must** use this method. If there are any arrearages, they can usually be addressed in an Order. You must include a statement that payments for arrearages cease upon full payment of the arrearages or the death of the participant, whichever occurs first. You must also state the monthly amount or percentage that will be distributed to the alternate payee, until the total arrearages are repaid.

Benefits Already in Pay Status -- Since the participant has retired from and is actually receiving a Retirement Allowance from his/her pension plan, the Order can state that the pension plan is hereby directed to pay to the Alternate payee that portion of the Participant's monthly retirement allowance which is equal to [choose one: _____ Dollars (\$_____) **OR** _____ percent (___%)] of the total amount of the monthly Retirement Allowance the Participant is currently receiving. The Alternate payee shall be liable for any taxes due upon his/her portion of the retirement benefit. The benefits due to the Alternate payee shall be payable to him/her as soon as administratively practicable after a Court certified copy of this Order is accepted by the Plan.

4. **Form of Benefit** --

Separate Interest -- The benefits payable to the alternate payee shall be payable in any form in which such benefits may be paid under the pension plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and any subsequent spouse). Said benefits shall be payable to the alternate payee for her lifetime. The death of the participant after the benefits are in pay status, shall have no effect on the payment of the benefit assigned to the alternate payee. **Note: Since the benefit is actually segregated in the name of the alternate payee, the amount of the benefit will be actuarially adjusted, based upon the alternate payee's sex and age. Assignment of arrearages is not allowed under a separate interest benefit.**

Shared Interest -- Said benefits shall be payable to the alternate payee in the same form as elected by the participant and shall be payable to the alternate payee for the lifetime of the participant. If the alternate payee predeceases the participant, all benefits revert to the participant. **Note: Since the benefit is not actually segregated, but merely divided, the amount of the benefit will not be actuarially adjusted, based upon the alternate payee's sex and age. Assignment of arrearages is usually allowed under a shared interest benefit.**

5. **Early Retirement Subsidy** -- If, prior to the time that the alternate payee has commenced receiving benefits, the participant elects to receive an early retirement benefit and receives an early retirement subsidy, the amount payable to the alternate payee shall be calculated so that the alternate payee shares in said benefit.
6. **Cost of Living Adjustments (COLA)** -- The alternate payee shall be entitled to cost of living adjustments attributable to contractual changes negotiated or in effect after the date of the summons for divorce, except as may be applicable to that portion of any pension or retirement fund which has already been segregated by any plan Trustee/Administrator.
7. **Preretirement Surviving Spouse Benefit** -- In the event that the participant predeceases the alternate payee and neither the alternate payee nor the participant has commenced their benefits under the plan, the

alternate payee shall be considered the designated beneficiary and/or the surviving spouse of the participant for purposes of establishing the alternate payee's entitlement to receipt of the preretirement surviving spouse benefit, to the extent provided under the agreement. The participant shall provide the alternate payee with copies of all documents relating to the choice of retirement options or any other act affecting the participant's retirement benefits, which copies shall be mailed to the alternate payee by certified mail no later than seven days after the earlier of their signing or submission by the participant. In the event that the costs associated with providing this preretirement benefit coverage are not fully subsidized by the participant's employer, then the participant must make an affirmative election for such preretirement surviving spouse coverage in a timely manner and in accordance with the plan's election procedures. Agreement can specify that any cost will be shared or paid by the alternate payee.

8. **Post-Retirement Death Benefits** – Necessary only if the DRO is drafted as a Shared Interest. If the stipulation is silent on the issue of pre or post retirement death benefits, the Court has held that they cannot be provided for in the DRO.
9. **Interim Protection** -- From the execution of this Agreement until the commencement of receipt by the participant or the alternate payee of retirement benefits, the participant will designate and maintain the alternate payee as his beneficiary for 50% of his death benefits under the pension plan.
10. **Alternate Payee Benefit Protection** -- It is the further intention that any judgment or order contemplated pursuant to this Agreement shall contain a provision that the survivor benefits payable to the alternate payee in this Agreement shall not be reduced due to the fact that any subsequent remarriage of the participant would result in a reduced survivor benefit under the terms of the plan.
11. **Direct Payments** -- If for any reason the QDROs are not in place at the time benefits reach pay status, the alternate payee shall be entitled to his/her share of the benefits as defined in this Agreement and in the Domestic Relations Orders. Said benefit shall be payable to the alternate payee directly from the participant.
12. **Jurisdiction of the Court** -- It is the parties' intention that the Court shall retain jurisdiction to clarify, correct or expand its orders to effectuate the intent of the parties, as set forth in this Agreement. The parties acknowledge and represent that the language of said orders may be changed from that which is in the Agreement to facilitate acceptance of said orders as QDROs, upon the consent and cooperation of the parties.
13. **Payment Binder** -- The orders shall be binding on the participant and the participant's estate and the participant or his estate shall pay over to the alternate payee the moneys called for in the Order, whether or not same is honored by the plan Administrators as a QDRO, should the plans not pay the alternate payee directly and for purposes of the parties' tax considerations, the payments by the participant to the alternate payee shall be maintenance.
14. **Required Documents** -- The participant agrees to execute any and all documents which might be required or necessary to provide information, authorizations and/or releases as may be required in order to prepare and submit the said Domestic Relations Order for consideration by the plan Administrators, the approval by the plan Administrators and execution by the Court.

Sample Defined Benefit Pension Stipulation Language

Structured as a Separate Interest

The parties agree that the Husband has a beneficial interest in a defined benefit pension plan. A Domestic Relations Order will be prepared directing that the Wife shall be entitled to 50% of the marital interest in said plan as provided by the Court of Appeals in **Majauskas v Majauskas**, 61 N.Y.2d 481, 474 N.Y.S. 2d 699 (1984). The specific terms of the division of this asset are as follows:

The name of the Plan for the Order is the _____ (the "Plan"). Any successor to this Plan shall also be subject to the terms of the Order.

The Participant in the Plan is _____.

The Alternate Payee is the spouse or former spouse, _____.

Date of Determination: The date that the benefit commences to the Alternate Payee.

Accrued Benefit: An Accrued Benefit is the Participant's monthly benefit, determined as if he/she terminated employment or retired on the Date of Determination. A Participant is vested if he/she has a nonforfeitable right to a benefit under a Plan.

The Alternate Payee is awarded a portion of the Participant's benefit that accrued during the marital period ("Marital Interest"). The Marital Interest shall be a fraction, defined as follows: The numerator of said fraction shall be the total number of months of credited service between the Participant's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, and the denominator shall be the total number of months of credited service up to the earlier of the termination of the Participant's employment, retirement, or commencement of payments to the Alternate Payee. The Alternate Payee is awarded 50% of the Marital Interest, multiplied by the Accrued Benefit.

Any actuarial reduction that might be necessary to base the Alternate Payee's benefit on the Alternate Payee's lifetime should be applied to the Alternate Payee's benefit. Further, early commencement reductions shall be made as necessary to reflect commencement of the Alternate Payee's benefit prior to the Participant's normal retirement age or prior to the commencement of benefit payments to the Participant. Except as provided below, if such reductions are required, they shall be determined on the basis of the Plan's actuarial assumptions and not on the basis of any subsidized early retirement factors contained in the Plan.

If, prior to the time that the Alternate Payee has commenced receiving benefits, the Participant elects to receive an early retirement benefit and receives an early retirement subsidy, the amount payable to the Alternate Payee shall be calculated so that the Alternate Payee's benefit shall be increased by a proportionate share of any such early retirement subsidy.

If, after the time that the Alternate Payee has commenced receiving benefits, the Participant elects to receive an early retirement benefit and receives an early retirement subsidy, the amount payable to the Alternate Payee may be recomputed as necessary, so that the amount awarded to the Alternate Payee shall be increased by a proportionate share of any such early retirement subsidy.

If the Plan pays a cost-of-living increase or any other post-retirement benefit increase to the Participant, the amount of any benefit payment the Alternate Payee is receiving will be increased in proportion to the Alternate Payee's share of the Participant's benefit.

Except as otherwise noted, the Accrued Benefit assigned to the Alternate Payee shall be paid to the Alternate Payee for her lifetime in any form available in accordance with the provisions of the Plan. However, the Alternate Payee's benefits may not be paid as a joint and survivor annuity naming the Alternate Payee's subsequent spouse as the survivor. If the Alternate Payee's benefit has a present value of \$5,000 or less, then the Plan may choose to distribute, or the Alternate Payee may elect to receive, the benefit as an immediate lump sum.

The Alternate Payee may begin receiving her benefit payments on or after the earliest date on which the payments may begin under the Plan and the law, as she selects. In no event can the Alternate Payee defer commencement of benefits later than the Participant's actual commencement date.

The benefit assigned to the Alternate Payee is calculated as a separate interest benefit over her lifetime. The benefit awarded hereinabove will not change if the Participant dies prior to the Alternate Payee. Therefore, if the Participant dies prior to the commencement of benefit payments to either the Participant or the Alternate Payee, the benefit awarded to the Alternate Payee hereinabove shall constitute the Alternate Payee's pre-retirement surviving spouse benefit.

However, if the Plan does not provide for a separate interest benefit for the Alternate Payee prior to commencement of benefits to the Alternate Payee, then for the purpose of this Order, the Alternate Payee shall be treated as a surviving spouse of the Participant for purposes of the Qualified Preretirement Survivor Annuity (QPSA) under the Plan, so that in the event the Participant dies prior to his retirement and prior to the time the Alternate Payee begins to receive her benefits under the Plan, the Alternate Payee is awarded 50% of the pre-retirement death benefit provided under the Plan as calculated under the Marital Interest hereinabove set forth.

The death of the Participant after the benefits are in pay status to the Alternate Payee shall have no effect on the payment of the benefit assigned to the Alternate Payee.

If the Alternate Payee dies prior to the commencement of the Alternate Payee's benefit, the assigned benefit will become payable to the Alternate Payee's designated beneficiary if allowable under the rules of the Plan, otherwise, the benefit shall revert to the Participant.

If the Alternate Payee dies after the Alternate Payee's benefits commence, death benefits will be paid in accordance with the form of payment elected by the Alternate Payee at commencement.

This matter arises from an action for divorce or legal separation in this Court under the case number set forth at the beginning of this Stipulation. Accordingly, this Court has jurisdiction to issue a Domestic Relations Order.

In the event the Plan Administrator determines that the Order is not a Qualified Domestic Relations Order, both parties shall cooperate with the Plan Administrator in making any changes needed for it to become qualified. This includes signing all necessary documents. For this purpose, this Court expressly reserves jurisdiction over the dissolution proceeding involving the Participant, the Alternate Payee, and the Participant's interest in the Plan.

For purposes of Sections 402 and 72 of the Code, any Alternate Payee who is the spouse or former spouse of the Participant shall be treated as the distributee of any distribution or payments made to the Alternate Payee under the terms of the Order and, as such, will be required to pay the appropriate federal, state, and local income taxes on such distributions.

If the Plan inadvertently pays to the Participant any benefit that is assigned to the Alternate Payee pursuant to the terms of the Order, the Participant will immediately reimburse the Alternate Payee to the extent that the Participant has received such benefit payments and shall forthwith pay such amounts so received to the Alternate Payee within ten (10) days of receipt.

If the Plan inadvertently pays to the Alternate Payee any benefit that is actually payable to the Participant, the Alternate Payee must make immediate reimbursement to the Participant. If the Plan inadvertently pays to the Participant any benefit that is actually payable to the Alternate Payee, the Participant must make immediate reimbursement to the Alternate Payee.

If the Plan is terminated, whether on a voluntary or involuntary basis, and the Participant's benefits become guaranteed by the Pension Benefit Guaranty Corporation (PBGC), the Alternate Payee's benefits, as stipulated herein, will also be guaranteed to the same extent in accordance with the Plan's termination rules and in the same ratio as the Participant's benefits are guaranteed by the PBGC.

Sample Defined Benefit Pension Stipulation Language

Structured as a Shared Interest for an Active Participant

The parties agree that the Husband has a beneficial interest in a defined benefit pension plan. A Domestic Relations Order will be prepared directing that the Wife shall be entitled to 50% of the marital interest in said plan as provided by the Court of Appeals in **Majauskas v Majauskas**, 61 N.Y.2d 481, 474 N.Y.S. 2d 699 (1984). The specific terms of the division of this asset are as follows:

The Participant in the Plan is _____.

The Alternate Payee is the spouse or former spouse, _____.

The name of the Plan is the _____ (the "Plan"). Any successor to this Plan shall also be subject to the terms of the Order.

Date of Determination: The earlier of the date of the termination of the Participant's employment or retirement.

Accrued Benefit: An Accrued Benefit is the Participant's monthly, vested benefit, determined as if he terminated employment or retired on the Date of Determination. A Participant is vested if he has a nonforfeitable right to a benefit under a Plan.

The Alternate Payee is assigned a portion of the Participant's benefit that accrued during the marital period ("Marital Interest"). The Marital Interest shall be a fraction, defined as follows: The numerator of said fraction shall be the total number of months of credited service between the Participant's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, and the denominator shall be the total number of months of credited service up to the earlier of, the Participant's retirement, termination of employment or death. The Alternate Payee is awarded 50% of the Marital Interest, multiplied by the Accrued Benefit.

If the Plan pays a cost-of-living increase or any other post-retirement benefit increase to the Participant, the amount of any benefit payment to the Alternate Payee, will be increased in proportion to the Alternate Payee's share of the Participant's benefit.

After the Alternate Payee commences payment, the Alternate Payee shall have no right to any other increase in the Participant's benefit under the Plan caused by the service, earnings, separation programs, or Plan amendments occurring subsequent to benefits commencement. Neither shall the Alternate Payee have any right to the portion of the Participant's retirement benefit under the Plan that is not assigned under this Stipulation.

The Alternate Payee is not entitled to elect a form of payment. The Alternate Payee's benefits will be paid from the Participant's monthly benefit payment, in accordance with the amount of payment as determined under the Marital Interest formula hereinabove set forth.

The Alternate Payee will commence payment if, as, and when, the Participant elects to commence benefits.

In the event of the death of the Participant prior to his commencement of benefits, the Alternate Payee shall be designated as a surviving spouse for the purposes of the Qualified Preretirement Survivor Annuity (QPSA) benefit payable on the percentage of the benefit assigned under the Marital Interest formula. Under this option, the Alternate Payee will receive her share of the QPSA benefit upon the death of the Participant.

If the Alternate Payee predeceases the Participant prior to the commencement of benefit payments to the Alternate Payee, the benefit otherwise payable to the Alternate Payee reverts to the Participant.

If the Alternate Payee is to be named as a beneficiary of any post-retirement death benefit, use the following paragraph:

In the event of the death of the Participant after commencement of benefits, the Alternate Payee is designated as a surviving spouse for purposes of the Qualified Joint and Survivor Annuity (QJSA) benefit payable as 50% of the Marital Interest. Under this option, the Alternate Payee will receive her share of the QJSA benefit upon the death of the Participant.

If the Alternate Payee dies after the Alternate Payee's benefits commence, the benefit otherwise payable to the Alternate Payee reverts to the Participant.

This matter arises from an action for divorce or legal separation in this Court under the case number set forth at the beginning of this Stipulation. Accordingly, this Court has jurisdiction to issue an Order.

In the event the Plan Administrator determines that the Domestic Relations Order is not a Qualified Domestic Relations Order, both parties shall cooperate with the Plan Administrator in making any changes needed for it to become qualified. This includes signing all necessary documents. For this purpose, this Court expressly reserves jurisdiction over the dissolution proceeding involving the Participant, the Alternate Payee, and the Participant's interest in the Plan.

For purposes of Sections 402 and 72 of the Code, any Alternate Payee who is the spouse or former spouse of the Participant shall be treated as the distributee of any distribution or payments made to the Alternate Payee under the terms of the Order and, as such, will be required to pay the appropriate federal, state, and local income taxes on such distributions.

If the Plan inadvertently pays to the Participant any benefit that is assigned to the Alternate Payee pursuant to the terms of the Order, the Participant will immediately reimburse the Alternate Payee to the extent that the Participant has received such benefit payments and shall forthwith pay such amounts so received to the Alternate Payee within ten (10) days of receipt.

If the Plan inadvertently pays to the Alternate Payee any benefit that is actually payable to the Participant, the Alternate Payee must make immediate reimbursement. If the Participant's benefits have not begun, the Alternate Payee shall immediately reimburse the Plan. If the Participant's benefits have begun, the Alternate Payee shall immediately reimburse the Participant. In either case, the Alternate Payee must reimburse to the extent that she has received such benefit payments and shall forthwith pay such amount so received to either the Plan or the Participant within ten (10) days of receipt.

If the Plan is terminated, whether on a voluntary or involuntary basis, and the Participant's benefits become guaranteed by the Pension Benefit Guaranty Corporation (PBGC), the Alternate Payee's

benefits, as stipulated herein, will also be guaranteed to the same extent in accordance with the Plan's termination rules and in the same ratio as the Participant's benefits are guaranteed by the PBGC.

Sample Defined Benefit Pension Stipulation Language

Structured as a Shared Interest for a Retired Participant

The parties agree that the Husband **is retired** and has a beneficial interest in a defined benefit pension plan. A Domestic Relations Order will be prepared directing that the Wife shall be entitled to 50% of the marital interest in said plan as provided by the Court of Appeals in **Majauskas v Majauskas**, 61 N.Y.2d 481, 474 N.Y.S. 2d 699 (1984). The specific terms of the division of this asset are as follows:

The name of the Plan is the _____ (the "Plan"). Any successor to this Plan shall also be subject to the terms of the Order.

The Participant in the Plan is _____.

The Alternate Payee is the spouse or former spouse, _____.

Accrued Benefit: An Accrued Benefit is the Participant's monthly, vested benefit, as of the Participant's actual date of retirement. A Participant is vested if he has a nonforfeitable right to a benefit under a Plan.

The Alternate Payee is assigned a portion of the Participant's benefit that accrued during the marital period ("Marital Interest"). The Marital Interest shall be a fraction, defined as follows: The numerator of said fraction shall be the total number of months of credited service between the Participant's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, or the date of the Participant's retirement, whichever is earlier, and the denominator shall be the total number of months of credited service up to the date of his actual retirement. The Alternate Payee is awarded 50% of the Marital Interest, multiplied by the Accrued Benefit.

If the Alternate Payee is owed arrearages, use paragraph 1 for lump-sum amounts or paragraph 2 if the participant has already commenced receiving benefits and the DRO has not yet been served:

Alternative 1. - The Plan is directed to deduct the additional sum of \$_____ monthly from the Participant's retirement allowance, on behalf of the Alternate Payee, until the Alternate Payee's outstanding payments in the amount of \$25,000.00, are satisfied in full.

Or;

Alternative 2. - The Alternate Payee is entitled to arrearages. The Plan shall calculate the number of months between the date of the Participant's commencement of benefits, up to the date that payments actually commence to the Alternate Payee. The total number of months shall be multiplied by the monthly amount due the Alternate Payee as calculated under the above formula. The result of this calculation shall be the Total Arrearages due the Alternate Payee, and shall be payable at the rate of \$_____ monthly from the Participant's retirement allowance, on behalf of the Alternate Payee, until the Total Arrearages have been paid, or the earlier of the Participant's death or the Alternate Payee's death, whichever occurs first.

If the Plan pays a cost-of-living increase or any other post-retirement benefit increase to the Participant, the amount of any benefit payment the Alternate Payee is receiving will be increased in proportion to the Alternate Payee's share of the Participant's benefit.

The Alternate Payee is not entitled to elect a form of payment. The Alternate Payee's benefits will be paid from the Participant's monthly benefit payment, in accordance with the amount of payment as determined under the Marital Interest formula hereinabove set forth.

The Alternate Payee will commence payment as soon as administratively practicable after a Court Certified Domestic Relations Order is qualified by the Plan.

Since the Participant has already retired, any death benefit option chosen at the time of retirement, shall remain in effect.

If the Alternate Payee dies after the Alternate Payee's benefits commence, the benefit otherwise payable to the Alternate Payee reverts to the Participant.

For purposes of Sections 402 and 72 of the Code, any Alternate Payee who is the spouse or former spouse of the Participant shall be treated as the distributee of any distribution or payments made to

the Alternate Payee under the terms of a Domestic Relations Order and, as such, will be required to pay the appropriate federal, state, and local income taxes on such distributions.

If the Plan inadvertently pays to the Participant any benefit that is assigned to the Alternate Payee pursuant to the terms of a Domestic Relations Order, the Participant will immediately reimburse the Alternate Payee to the extent that the Participant has received such benefit payments and shall forthwith pay such amounts so received to the Alternate Payee within ten (10) days of receipt.

If the Plan inadvertently pays to the Alternate Payee any benefit that is actually payable to the Participant, the Alternate Payee must make immediate reimbursement to the Participant. If the Plan inadvertently pays to the Participant any benefit that is actually payable to the Alternate Payee, the Participant must make immediate reimbursement to the Alternate Payee.

If the Plan is terminated, whether on a voluntary or involuntary basis, and the Participant's benefits become guaranteed by the Pension Benefit Guaranty Corporation (PBGC), the Alternate Payee's benefits, as stipulated herein, will also be guaranteed to the same extent in accordance with the Plan's termination rules and in the same ratio as the Participant's benefits are guaranteed by the PBGC.

ERISA Defined Contribution Plans

A **defined contribution (DC) plan** is a type of retirement plan in which the employer, employee or both, make contributions on a regular basis. Individual accounts are set up for participants and benefits are based on the amounts credited to these accounts (through employer contributions and, if applicable, employee contributions) plus any investment earnings on the money in the account. Only employer contributions to the account are guaranteed, not the future benefits. In defined contribution plans, future benefits fluctuate on the basis of investment earnings. The most common type of defined contribution plan is a savings and thrift plan. Under this type of plan, the employee contributes a predetermined portion of his or her earnings (usually pretax) to an individual account, all or part of which is matched by the employer.

Identification of Plan/Benefits -- The participant is a member of the _____ Savings/ annuity/ deferred compensation plan and represents that there are no outstanding loans against his/her plan account, and shall not take out any loans, nor in any way encumber said plans. If there are current loans, there must be some agreement as to who is responsible for the repayment of the loan.

Death of Alternate Payee -- In the event the alternate payee dies prior to the time that the portion of the Savings plan account allocated to him/her has been transferred to an account in his/her name or prior to the actual distribution to the alternate payee, his/her benefit shall be payable to his/her designated beneficiaries, or if he/she has not designated any beneficiaries, to his/her estate.

Entitlement of Alternate Payee -- Nothing in this Agreement shall be construed to limit the remedies of the alternate payee in obtaining his/her portion of the participant's plans in the event the QDROs are not entered or in the event a DRO does not attain the status of an ODRO. The parties hereby acknowledge and represent that the alternate payee is unequivocally entitled to share in the participant's benefits under the plans to the extent required in this Agreement.

Preparation of QDRO -- Nothing herein contained shall prevent either party from preparing and submitting, with the cost to be shared equally between the parties, an appropriate Qualified Domestic Relations Order to the Court for execution prior to the submission of a Judgment of Divorce, following settlement or trial resolution of the divorce action.

Responsibility for Taxes -- Any and all tax consequences of the payments from all pension/retirement plans to be made to the alternate payee shall be borne by the alternate payee.

Required Documents -- The participant agrees to execute any and all documents which might be required or necessary to provide information, authorizations and/or releases as may be required in order to prepare and submit the said Domestic Relations Order for consideration by the plan Administrators, the approval by the plan Administrators and execution by the Court.

Sample Defined Contribution Plan/401(k) Plan

Stipulation Language

Nota Bene: Most defined contribution plans will not allow the Majauskas/Marital Interest formula in the DRO. Nor will they allow for the award of an amount accumulated between two dates. The vast majority of plans require a specific amount or percentage, determined as of a specific date. If the entire account was accumulated during the marriage you should not have any problems. However, many plans have changed recordkeepers over the years. You may run into a problem if the Alternate Payee is awarded gains or losses on an amount determined prior to the date the new recordkeeper took over the account. They will not be able to calculate the gains or losses for the period between the division date and the date that they took over the account. They will reject the Order and you will be back to square one. It is best to come to the negotiating table with knowledge of these issues and an alternative plan. If the account is not all marital, you may need a Tracing Method calculation to determine the marital portion.

The suggested stipulation language is as follows:

The parties agree that the Husband has a beneficial interest in a defined contribution plan. A Domestic Relations Order will be prepared directing that the Wife shall be entitled to a portion of the Participant's account balance as determined below. The specific terms of the division of this asset are as follows:

The name of the Plan is _____ (the "Plan"). Any successor to this Plan shall also be subject to the terms of the Order.

The Participant in the Plan is _____.

The Alternate Payee is the spouse or former spouse, _____.

Account Balance: The Participant's Account Balance is the dollar amount the Participant has a nonforfeitable right to receive from the Plan.

Valuation Date: The Valuation Date is the date on which the Participant's Account Balance will be valued in order to determine the Alternate Payee's designated portion.

Liquidation Date: The Liquidation Date is the date the amount assigned to the Alternate Payee is transferred from the Participant's Account Balance to a separate account established for the Alternate Payee. An assignment as of the Liquidation Date assigns a portion of the Participant's current Account Balance.

The Alternate Payee is assigned an amount equal to 50% of the Participant's Account Balance under the Plan as of _____ (Valuation Date). In the event that the Participant had any loans outstanding as of the Valuation Date, the account balance shall be reduced by the outstanding loan balance prior to the calculation of the Alternate Payee's awarded amount. *(If there are any additional amounts payable to the Alternate Payee, you can add them here, **Note:** For US Government employees, the US Thrift Savings Plan with **Not** allow additional amounts.)* In addition to the amount awarded, the Alternate Payee is awarded the additional sum of \$_____, determined as of _____. From the Valuation Date to the Liquidation Date, the amount assigned to the Alternate Payee **shall/shall not** include interest and investment income or losses. The Alternate Payee's interest in the Plan shall be treated as her sole and separate property, and shall be maintained as a separate account for the benefit of the Alternate Payee, subject to all terms and conditions of the Plan. The Alternate Payee's portion shall be proportionately divided among the investment funds in the same manner as the Participant's account(s) is/are allocated.

The Alternate Payee shall receive the portion of the Participant's Account balance assigned to the Alternate Payee in a single lump-sum payment. Such amount shall be adjusted for earnings and losses from the Liquidation Date to the date of distribution to the Alternate Payee. At such time as the Alternate Payee's portion of the account is actually distributed to the Alternate Payee, said amount may be made as a "direct rollover" transfer into an IRA or similar account as designated by the Alternate Payee. Such rollover shall be made in accordance with the terms of the Plan and applicable law. The Alternate Payee shall provide all necessary information and fill out all necessary documents as required by the Plan Administrator to effectuate such transfer.

The Alternate Payee shall be eligible to receive payment as soon as administratively reasonable following the determination that an Order is a Qualified Domestic Relations Order, or, if later, as of the earliest date allowable under the rules of the Plan. In no event can the Alternate Payee begin her benefit later than April 1 following the year in which the Participant attains age 70- 1/2.

If the Participant predeceases the Alternate Payee prior to payment of the Alternate Payee's assigned benefits, the Alternate Payee's benefits will not be affected. In the event of the Participant's death, the Participant's separate Account Balance, shall remain the property of the Participant, and will be payable to the Participant's designated beneficiary or in accordance with the Plan provisions. Therefore, the Alternate Payee shall not be treated as the Participant's surviving spouse for the purpose of the Plan's survivor annuities.

In case of the death of the Alternate Payee prior to distribution of the Alternate Payee's benefits under the Order, the assigned benefits will be paid to the Alternate Payee's designated beneficiary, or, if none, in accordance with Plan provisions.

This matter arises from an action for divorce or legal separation in this Court under the case number set forth at the beginning of this Stipulation. Accordingly, this Court has jurisdiction to issue an Order.

In the event the Plan Administrator determines that the Order is not a Qualified Domestic Relations Order, both parties shall cooperate with the Plan Administrator in making any changes needed for it to become qualified. This includes signing all necessary documents. For this purpose, this Court expressly reserves jurisdiction over the dissolution proceeding involving the Participant, the Alternate Payee, and the Participant's interest in the Plan.

For purposes of Sections 402 and 72 of the Code, any alternate payee who is the spouse or former spouse of the Participant shall be treated as the distributee of any distributions or payments made to the Alternate Payee under the terms of the Order and, as such, will be required to pay the appropriate federal, state, and local income taxes on such distributions.

If the Plan inadvertently pays to the Alternate Payee any benefit that is actually payable to the Participant, the Alternate Payee must make immediate reimbursement to the Participant. If the Plan

inadvertently pays to the Participant any benefit that is actually payable to the Alternate Payee, the Participant must make immediate reimbursement to the Alternate Payee.

If the Plan inadvertently pays to the Alternate Payee any benefit that is actually payable to the Participant, the Alternate Payee must make immediate reimbursement. The Alternate Payee must reimburse to the extent that she has received such benefit payments and shall forthwith pay such amount so received to the Plan within ten (10) days of receipt.

If the Plan is terminated, the Alternate Payee shall be entitled to receive her portion of the Participant's benefits as stipulated herein, in accordance with the Plan's termination provisions for participants and beneficiaries.

The Alternate Payee shall be responsible for notifying the Plan Administrator, in writing, of any changes in her name and/or mailing address, subsequent to the entry of an Order. All payments made pursuant to an Order shall be conditioned on the certification by the Alternate Payee and the Participant to the Plan Administrator of such information as the Plan Administrator may reasonably require from such parties to make the necessary calculation of the benefit amounts contained herein.

Non-ERISA Defined Benefit Governmental Plans

City, State, Teachers, Federal, Military and Railroad Employees

General Rules -- Governmental plans are exempt from ERISA rules and therefore, are free to make their own rules. They all will accept Domestic Relations Orders, with certain limitations to the language. Their primary concern is for the plan participant. **They only allow payments to the alternate payee under the Shared Interest method.** They do not allow a lifetime payment to the alternate payee. They do not allow the alternate payee to choose any death benefit option for the portion of the benefit assigned to them and they do not allow the alternate payee to begin collection of benefits until the participant actually retires. All Orders to these plans must assign a specific amount or percentage, (Majauskas formula can be used), to be paid to the alternate payee for a specific time period or the lifetime of the participant. Assignment of arrearages are usually allowed.

Death Benefit Provisions -- In order to provide for a lifetime of benefits to the alternate payee, specific language must be inserted in the agreement. e.g. Upon retirement, the participant shall designate the alternate payee as a beneficiary under the plan, so that upon the death of the participant, the alternate payee shall [receive the same amount he/she was receiving while the participant was alive], [receive the full benefit under the ___% Joint & Survivor benefit], [receive a benefit under the 5 or 10 Year Certain option]. **Note: The problem with most of these options is that they provide a benefit to a sole irrevocable beneficiary. If it is a short-term marriage, or the marriage is a small percentage of the total years of service that the participant will have at retirement, it prevents the participant from designating a possible subsequent spouse as a beneficiary under the plan.**

Federal Death Benefit -- The Civil Service Retirement System, Federal Employees Retirement System, and Military Retirement Pay Program, all provide for a Survivor Benefit Program (SBP). The SBP provides both pre and post survivor coverage. There are many limitations imposed by the government, e.g. if the alternate payee remarries prior to age 55, he/she will not be eligible for a SBP benefit. Under military plans, the parties must have been married for 10 years while the member was in active duty. If not, the order must be structured to effectuate support payments. If SBP benefits are awarded, the military must be notified, in writing, **within one year of the date of divorce**, that the alternate payee will be eligible for a benefit under the SBP.

Railroad Employee Benefits -- Railroad employees are usually covered under dual plans. All employees are covered under the U.S. Railroad Retirement Board. The benefits under Tier 1 of this plan are similar to Social Security benefits. If the alternate payee is eligible for these benefits (same rules as Social Security), he/she will receive them upon eligibility. In addition, there is a Tier 2 benefit which is subject to equitable distribution and assignable with a Domestic Relations Order. Additional benefits are often provided by the employer, e.g. the Long Island Rail Road and the MTA both provide defined benefit pensions and a choice of defined contribution plans, Conrail employees have no defined benefit plan through their employer. Locomotive engineers have a separate union. No death benefits are allowed to an alternate payee under the LIRR Pension plan (plan only provides for current spouse). All Railroad employees may also participate in a 401(k) plan or deferred compensation plan (457 Plan), which may be offered by their employer.

The above information is intended to be used as a general guideline for attorneys and are to be used for informational purposes only. This listing is not intended to be construed as providing legal advice. This information is general in nature, does not include all possible scenarios related to pensions in divorce, and includes the author's opinions.

This is a sample of our new Question & Answer format when issuing a draft of the Domestic Relations Order to our clients.

**Summary of Domestic Relations Order (DRO) Provisions
(Based Upon the Information Provided)**

Type of DRO – (Original or Amended):

This is an Original Order

Participant Information:

Name: Mary J. Smith
Date of Birth: 5/4/1970
SS Number: ###-##-6789
Address: 1 Main Street, Hicksville, New York 11801
Employment Status: Active
Date Hired: 11/3/1988
Date of Retirement: 1/3/2012
Plan Name: New York State and Local Employees' Retirement System

Alternate Payee (Former Spouse) Information:

Name: John J. Smith
Date of Birth: 3/17/1975
SS Number: ###-##-4321
Address: 14 First Avenue, Hicksville, New York 11801

Case Information:

Plaintiff: Mary J. Smith
Defendant: John J. Smith
Date of Marriage: 1/18/1991
Divorce Commenced on: 1/3/2012
Asset Cutoff Date: 1/3/2012
Date of Divorce: _____
State of Jurisdiction: New York

If the Participant retires under a service retirement, what is the formula used to calculate the Alternate Payee's distribution?

The Alternate Payee shall receive as a distribution, in accordance with the formula devised in the case of *Majauskas v. Majauskas*, 61 NY 2d 481(1984), a portion of the Participant's benefit that accrued during the marital period ("Marital Interest"). The Marital Interest shall be a fraction, defined as follows: The numerator shall be the total number of months of credited service between the Participant's date of initial credited service in the Retirement System, or the date of the parties' marriage, that being January 18, 1991, whichever is later, up to the date of the division of marital assets, that being January 3, 2012, and the denominator shall be the total number of months of credited service which the Participant has at the time of retirement, termination or death. The Alternate Payee is awarded 50.00% of the Marital Interest, multiplied by the Participant's maximum monthly retirement allowance.

Note: Under the Retirement System's rules, all awards to alternate payees are based upon the "...Participant's maximum monthly retirement allowance prior to any optional modification...." Adjustments are then made, as specified in the Order, to the alternate payee's awarded amount, depending upon how his/her awarded portion will be affected by loans, COLAs and, if the alternate payee is named as a beneficiary of any post-retirement death benefits, whether or not the Alternate Payee is to share in the cost of the retirement option.

If the Participant retires/retired under a disability retirement, what is the formula used to calculate the Alternate Payee's monthly distribution?

If the Participant retires on a disability retirement, or converts to a disability benefit after retirement, the Retirement System is hereby directed to calculate the Alternate Payee's share, using the lesser of, a hypothetical service retirement allowance, based on the Participant's earnings and years of credited service, without reduction for ordinary termination of employment or the Participant's actual disability retirement allowance. We state, the lesser of, because, depending upon years of service at the time of the disability, the formula for a disability benefit might provide a smaller monthly benefit than the Participant had actually accrued.

Will the Alternate Payee be entitled to Cost of Living Adjustments (COLA)?

The amount awarded to the Alternate Payee shall be deemed to include any Cost of Living Adjustments (COLA), which are paid to the Participant.

Will the Alternate Payee be entitled to any pre-retirement death benefits?

The Participant is directed to designate the Alternate Payee as a beneficiary of the Retirement System, so that in the event the Participant dies prior to retirement, the Alternate Payee shall receive 50.00% of any available pre-retirement death benefit calculated pursuant to the Marital Interest formula.

Is the Alternate Payee entitled to any post-retirement 'Ordinary Death' benefits?

The Participant is directed to designate the Alternate Payee as a beneficiary, so that upon the Participant's post-retirement death, the Alternate Payee shall receive 50.00% of any available post-retirement Ordinary Death benefit calculated pursuant to the Marital Interest formula.

Is the Alternate Payee entitled to be designated as a beneficiary under any post-retirement death benefit options?

The Participant is directed to elect at the time of retirement, assuming the Alternate Payee is then living, to receive benefits pursuant to the terms of the Special Joint Allowance Option, providing the Alternate Payee, upon the Participant's death, with a monthly retirement allowance payable for life, based upon the distribution calculated pursuant to the Marital Interest formula.

Who will bear the cost of the post-retirement death benefit option?

There was no mention in the Stipulation/Judgment of who shall bear the cost of the retirement option election. Therefore, based upon the plan's rules, the cost of the Participant's retirement option election shall be shared proportionately between the Participant and Alternate Payee. Please advise us if this was not the parties' intent.

Who bears the cost of the Pop-Up Option?

The Pop-Up option is available to the Participant at retirement, regardless of the option chosen to provide death benefits to the Alternate Payee. It provides that, should the Alternate Payee predecease the Participant, benefits will revert to the Participant under the Maximum Retirement Option. Since the Stipulation/Judgment was silent on the issue of who is responsible for the cost of any Pop-Up feature, the default position taken by the Retirement System is that the Participant shall be responsible for any cost associated with the election of the Pop-Up feature. Please advise us if this was not the parties' intent.

When will benefits commence to the Alternate Payee?

The Retirement System is directed to commence payments to the Alternate Payee effective with the Participant's retirement date. This is a 'governmental' plan and under the rules of the plan, the Alternate Payee cannot commence benefits prior to the actual retirement date of the Participant.

If the Participant has an outstanding loan at the time of retirement, how will the loan affect the Alternate Payee?

If the Participant is in a contributory plan, the Participant may not take further loans against membership contributions, and the Alternate Payee's share of the pension shall not be impacted by reductions to the Participant's pension for any outstanding loans at the time of the Participant's retirement.

If the Participant is in a contributory plan and the Participant receives a return of contributions, will the Alternate Payee receive a portion of the returned contributions?

There was no mention of return of contributions in the Stipulation/Judgement. However, we have included this language in the Order because it is a form of benefit that in either event, would include payment of benefits that accumulated during the marriage. The language included in the Order is as follows:

If the Participant is in a contributory plan and receives a return of any contributions, the Alternate Payee is entitled to 50.00% of any returned contributions payable to the Participant based on the Marital Interest formula.

Certain participants in the NYS&LPFRS are eligible to choose a Partial Lump Sum (PLS) payment at retirement. Will the be entitled to a portion of this PLS?

The Stipulation/Judgment states that if the Participant is eligible for and elects to receive a partial lump sum payment (PLS) from the Retirement System pension plans at the time of retirement, the PLS payment will be shared with the Alternate Payee. However, this option is only available to members of the NYS and Local Police and Fire Retirement System. Therefore, no mention of the PLS was included in the Order.

A Short List of Pension Related Cases

MAJAUSKAS v. MAJAUSKAS, 473 N.Y.S.2d 699, 61 N.Y.2d 481 (1984) Court Provides a Method to Calculate the Marital Portion of a Pension.

Issue: What portion of a husband's pension is subject to equitable distribution?

Decision: Court provides a formula to calculate the marital portion of a defined benefit pension benefit. Wife entitled to 50% of fractional portion of benefit. The numerator of the fraction is the total number of years married while husband was a participant in the pension plan. The denominator of the fraction is the total number of years the participant had in the plan up to commencement of retirement benefits.

DOLAN v. DOLAN, 577 N.Y.S.2d 195, 78 N.Y.2d 463, (1991) Wife Entitled to Marital Portion of Husband's Disability Pension Based Upon Years of Service.

Issue: What portion of the husband disability pension is subject to equitable distribution?

Argument: On appeal, plaintiff husband challenges the Appellate Division's affirmance of Supreme Court's determination that a portion of his ordinary disability pension received from NYC Employees' Retirement System is marital property and thus subject to equitable distribution.

Decision: Court concluded that inasmuch as a portion of that ordinary disability pension represents deferred compensation related to length of employment occurring during the marriage, it constitutes marital property subject to equitable distribution.

OLIVO v. OLIVO, 604 N.Y.S.2d 23, 83 N.Y.2d 202, (1993) Wife Entitled to a Portion of Husband's Early Retirement Incentive Package.

Issue: Husband received an early retirement incentive package from employer which included an enhanced pension, Social Security bridge payments and a monetary award.

Argument: Wife wanted a portion of all benefits. Husband argued that early retirement package was his separate property, acquired after the dissolution of the marriage.

Decision: Court held that wife was entitled to a portion of the enhanced pension benefit, but the Social Security bridge payments and the monetary award were not part of the normal pension benefits. These benefits were the result of a contractual agreement between the company and the participant which took place after the dissolution of the marriage.

There is an important statement in this decision which reaffirms and clarifies Majauskas. The Court states "Similarly, both parties' rights are generally subject to changes in the terms of the retirement plan, as well as to circumstances largely beyond their control, such as salary level finally achieved by the employee and used to calculate the pension benefit. What the nonemployee spouse possesses, in short, is the right to share in the pension as it is ultimately determined."

DeJESUS v. DeJESUS, 90 N.Y.2d 643, 687 N.E.2d 1319, 665 N.Y.S.2d 36 (1997)
Court Gives Guidance on How to Value Stock Options for Equitable Distribution.

Issue: Husband had stock options which were not exercisable until several years after the dissolution of the marriage.

Argument: Wife claimed that she was entitled to a 50% interest in said options because they were granted during the marriage. Husband claimed that he had to continue working until the exercise date and therefore, they were a post commencement benefit.

Decision: The Court determined that one must look to the underlying documents provided for the company stock option plan. If the options were granted for past service, the years of service while married prior to the option grant date would be used to determine the marital portion. If the options were granted for future service, the years of service while married subsequent to the grant date would be used to determine the marital portion.

DeLUCA v. DeLUCA, N.Y.S. Court of Appeals – (2001)
Husband's NYC Police Variable Supplement Fund (VSF) IS subject to Equitable Distribution.

Issue: Court to determine whether retirement benefits from the Police Officers Variable Supplements Fund (POVSF) are marital property subject to equitable distribution.

Argument: Appellate Division held that "In view of the express directive of the Legislature and the Court of Appeals decisions characterizing the benefits as non-pension benefits, we determine that the Police Superior Officers Variable Supplements Fund benefits and Police Officers Variable Supplements Fund benefits are not marital assets subject to equitable distribution." Wife appealed.

Decision: The decision of the Court of Appeals was as follows: "The key question, therefore, is whether VSF benefits are intended as compensation for past services rendered during the marriage or another form of compensation such as an incentive to continued employment, which is separate property post-divorce. We conclude that VSF benefits are a supplement to pension fund payments and, as such, a form of compensation for past services related to the first 20 years of police employment, notwithstanding the date they mature."

PALAZZOLO v. PALAZZOLO, 242 A.D.2d 688, 663 N.Y.S.2d 58 – (1997)
Specific guidance on calculating non-disability portion of a disability pension.

Issue: Husband argues that since the calculation of his Accident Disability Pension had no length of service requirement, it was not subject to equitable distribution.

Argument: In testimony before the Supreme Court, both pension experts testified as to the amount of the portion of the Accident Disability pension which was accrued due to service. Each expert used slightly different methodologies but arrived at the same accrued benefit due to actual service.

Decision: The decision of the Court of Appeals was as follows: “The defendant is incorrect in arguing that because his pension had no length-of-service requirement, it must be considered separate property.” This case provides very specific guidelines for calculation the service portion of a disability retirement benefit.

MORAN v. MORAN, - (2001)

Domestic Relations Orders (DRO)’s must be in strict conformity with the Stipulation.

Issue: This DRO was for the NYS&LRS. Original DRO was prepared without providing post-retirement survivorship benefits to the wife. Upon the wife’s motion, Supreme Court vacated original DRO and allowed an Amended DRO which specified survivorship benefits to the wife.

Argument: The husband appealed the Supreme Court’s decision, arguing that there was no provision in their Stipulation, compelling him to provide the wife with such benefits.

Decision: The Appellate Division vacated the Amended DRO and directed the Supreme Court to execute a DRO that was in strict conformity with the Stipulation, holding that the Supreme Court erred by issuing the revised DRO giving the wife a survivorship right, where the Stipulation was silent on that issue.

KAZEL v. KAZEL, 2004 NY Slip Op 08262 Court of Appeals

Any distribution of survivor benefits must be explicitly stated in the agreement or judgment.

Issue: Mr. Kazel died in 2001 before reaching retirement age, and therefore never received any payments under his retirement plan. Following his death the former spouse sought to share with the decedent’s widow in preretirement death benefits. Because the QDRO awarded an interest only in the decedent’s retirement annuity, and not his death benefits, the plan administrator denied the benefits.

Argument: The former spouse sought to modify the QDRO to award her a share in such benefits.

Decision: The Supreme Court denied the motion, concluding that the former spouse had failed to establish that the intent of the underlying divorce decree had been to award her survivor benefits. The Appellate Division affirmed the decision. The Court of Appeals also affirmed and stated that “...we therefore hold that reference to a pension plan or pension benefits will not be deemed to include death benefits...”

WALLACH v. WALLACH, 37 A.D.3d 707, 831 N.Y.S.2d 210 NY, - (2007)

Federal Civil Service Retirement System (CSRS) pension benefits should be reduced by that portion of that value that is equivalent to Social Security benefits.

Issue: Plaintiff wife was awarded a portion of the defendant's full benefit he was receiving from the Civil Service Retirement System.

Argument: Defendant argued that the portion of the value of his CSRS benefit should be reduced for equitable distribution purposes, by that portion of that value that is equivalent to Social Security benefits.

Decision: The Appellate Division held that the Supreme Court erred in failing to reduce the value of the defendant's pension for equitable distribution purposes by that portion of that value that is equivalent to Social Security benefits. As a member of the CSRS, the defendant neither contributes to, nor is eligible to receive, Social Security benefits, and his pension therefore constitutes, in part, the Social Security benefits to which he would be entitled were he not a federal employee. Social Security benefits are not a pension, and are not subject to equitable distribution.

BERARDI v. BERARDI, 2008 NY Slip Op 07203, Appellate Division, Second Department

Despite the fact that the parties' agreement stated that the wife was to receive a portion of the husband's "...pension, disability payment...", Appellate Division held the wife was not entitled to any portion of the disability benefit that was due to compensation for personal injuries.

Issue: Plaintiff wife was awarded a portion of the defendant's full Accident Disability Pension because their agreement stated that she was awarded a portion of the husband's "... pension, disability payment ..."

Argument: Defendant argued that the amount awarded to the wife from his Accident Disability Pension should be reduced, because a portion of the benefit was as compensation for personal injuries.

Decision: The Appellate Division held that the Supreme Court was only partially correct in awarding a portion of the disability benefit to the wife under the Majauskas formula. Basically, they held that the lower court erred in not differentiating between ordinary disability and accident disability. Returned case to the Supreme Court to determine the nature and status of the benefit and determine the wife's allocable share of same.

MESHOLAM v. MESHOLAM, Court Of Appeals, 2008 NY Slip Op 05778, Decided June 26, 2008, No. 122

The Court concluded that the value of marital property generally should NOT be determined by the commencement of an action for divorce that does not ultimately culminate in divorce. Equitable distribution is available “in an action wherein all or part of the relief granted is divorce.” Where there is no divorce, there can be no equitable distribution.

Issue: The question in this matter is whether the commencement of a prior, discontinued divorce action may serve as the valuation date for marital property for purposes of equitable distribution in a later divorce action.

Argument: The action for divorce was originally commenced by the wife in 1994. Five years later the Court granted the wife motion to discontinue the action. The husband immediately commenced an action for divorce in 1999. The Appellate Division concluded that the appropriate valuation date was the date of the 1994 action because there was no evidence that the parties reconciled and continued to receive the benefits of the marital relationship after the prior action was commenced.

Decision: The Court of Appeals concluded that the value of marital property generally should not be determined by the commencement of an action for divorce that does not ultimately culminate in divorce. Equitable distribution is available “in an action wherein all or part of the relief granted is divorce.” Where there is no divorce, there can be no equitable distribution.

Important Note: As a result of this decision, all of the governmental plans within New York State (NYS&LRS, NYSTRS, NYCERS, NYCTRS, NYPD, & NYFD), now require proof of divorce before they will enforce a DRO.

ROSENBERGER V ROSENBERGER, Appellate Division, Second Department, 2009 NY Slip Op 05103 [63 AD3d 898], Decided June 16, 2009

A Domestic Relations Order was signed by the Supreme Court, awarding the wife a portion of the firefighter husband’s Accident Disability Pension. Husband appealed, attempting to exclude the disability portion of the award. The Court affirmed the Supreme Court decision, denying the firefighter husband’s request for an amended Domestic Relations Order.

Issue: The plaintiff contended that the Supreme Court erred in concluding that the parties’ stipulation of settlement entitled the defendant to receive a share of his entire accident disability pension.

Decision: The plaintiff suffered a line-of-duty injury and applied for an accident disability pension before entering into the subject stipulation. The Court stated “Thus, he clearly was aware of or chargeable with knowledge of the prospect of his eventual disability retirement when he entered into the stipulation.” The Court held that, since the husband was aware that his application for an accident disability pension was approved prior to the stipulation, and he entered into an agreement which provided for a division of his pension, without reference to the disability portion of the pension, his application for an amended DRO was denied.

SCHUBERT V SCHUBERT, Appellate Division, Second Department, Decided October 25, 2011

A Domestic Relations Order (DRO) was signed by the Supreme Court, awarding the wife a portion of the police officer husband's Accident Disability Pension. Husband appealed, attempting to exclude the disability portion of the award. The Court reversed the Supreme Court decision, granting the police officer husband's request for an amended Domestic Relations Order.

Issue: The plaintiff contended that the Supreme Court erred in concluding that the parties' stipulation of settlement entitled the defendant to receive a share of his entire accident disability pension.

Decision: The parties entered into a stipulation of settlement providing for a 50% distribution to the plaintiff of the value of "any pension" received by the defendant. The Supreme Court signed a DRO which provided for a distribution of the marital portion of the pension, whether for service, ordinary disability or accident disability. The Court held that the parties' stipulation providing for a distribution of "any pension", which was entered into before the defendant became entitled to or applied for an accident disability pension, must likewise be construed to refer only to the portion of the defendant's pension representing deferred compensation. Since it was unanticipated that the defendant would qualify for a disability pension, there was no reason to conclude that a general provision providing for an equal distribution of "any pension" was intended to opt out of the controlling law in order to distribute portions of a pension that would not ordinarily be subject to equitable distribution.

Tracing Method Calculation

The Tracing Method can be used to compare the following:

1. the pre-marital balance to the marital contributions and the proportionate share of the earnings or losses and/or loans attributed to the account during the marriage
- Or
2. the balance as of the date of the commencement of the action, forward, to the post-marital contributions and the proportionate share of the earnings or losses attributed to the account after the marriage.

Utilizing the Tracing Method is without a doubt, the most accurate method to determine the marital and non-marital portions of defined contribution plan accounts. This method examines the actual investment experience of the account. Any earnings or losses are determined on a proportionate basis from month to month, quarter to quarter, or year to year, based on the type of detailed account statements provided. Also, any loans or distributions which were made during the marital period can be properly accounted for.

An example of a typical Tracing Method calculation is available in this handout. As illustrated in this sample:

Via the Tracing Method: As of the parties' date of marriage of June 30, 1996, the amount of the Husband's pre-marital funds was \$266,336.48. As of the date of commencement of the divorce action of March 31, 2013, the percentage and dollar value of his account representing the non-marital portion is 87.61% or \$1,220,999.52. The percentage and dollar value of the account representing the marital portion of the account as of March 31, 2013, that is subject to equitable distribution, is 12.39% or \$172,691.20, of which the Wife is entitled to \$86,345.60.

The results of using less accurate means of determining that portion of Joe Smith's TDA account that accumulated during the parties' marriage, are as follows:

Via the Subtraction Method: Account balance as of the date of commencement of the divorce action of March 31, 2013 was \$1,393,690.72, *minus* the Husband's pre-marital funds of \$266,336.48, equals \$1,127,354.24 which would be subject to equitable distribution, of which the Wife would be entitled to \$563,677.12.

Via the Coverture Method: Using the Coverture Method yields a marital fraction of 16.77% (5.59 years married while employed, divided by 33.34 years employed at retirement, equals 16.77%). 16.77% of \$1,393,690.72 is \$233,721.93. The Wife's one-half would be \$116,860.97.

Table I
Smith v. Smith Our Case No.: 00000
Joe Smith's NYC Teachers' Retirement System Tax Deferred Annuity
Calculation of Marital and Non-Marital Portions of Account

Date	Transaction	Total Value	Marital Portion	Non-Marital Portion	Marital Percent	Non-Marital Percent
Fixed Funds						
6/30/1996	Beginning Balance	\$19,123.48	\$0.00	\$19,123.48	0.00%	100.00%
	Contributions	\$5,977.93	\$5,977.93	\$0.00		
	SubTotal of Fixed Funds Account	\$25,101.41	\$5,977.93	\$19,123.48	23.82%	76.18%
	Income	\$883.02	\$210.29	\$672.73		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/1996	End of Year Balance	\$25,984.43	\$6,188.22	\$19,796.21	23.82%	76.18%
Variable A Annuity Program						
6/30/1996	Beginning Balance	\$247,213.00	\$0.00	\$247,213.00	0.00%	100.00%
	Contributions	\$0.00	\$0.00	\$0.00		
	Income	\$4,896.56	\$0.00	\$4,896.56		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/1996	End of Year Balance	\$252,109.56	\$0.00	\$252,109.56	0.00%	100.00%
Combined Values						
6/30/1996	Beginning Balance	\$266,336.48	\$0.00	\$266,336.48	0.00%	100.00%
	Employer Contributions	\$5,977.93	\$5,977.93	\$0.00		
	Income	\$5,779.58	\$210.29	\$5,569.29		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/1996	End of Year Balance	\$278,093.99	\$6,188.22	\$271,905.77	2.23%	97.77%
Fixed Funds						
1/1/1997	Beginning Balance	\$25,984.43	\$6,188.22	\$19,796.21	23.82%	76.18%
	Contributions	\$11,466.94	\$11,466.94	\$0.00		
	Income	\$2,597.12	\$618.51	\$1,978.61		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/1997	End of Year Balance	\$40,048.49	\$18,273.67	\$21,774.82	45.63%	54.37%
Variable A Annuity Program						
1/1/1997	Beginning Balance	\$252,109.56	\$0.00	\$252,109.56	0.00%	100.00%
	Contributions	\$0.00	\$0.00	\$0.00		
	Income	\$64,922.35	\$0.00	\$64,922.35		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/1997	End of Year Balance	\$317,031.91	\$0.00	\$317,031.91	0.00%	100.00%
Combined Values						
1/1/1997	Beginning Balance	\$278,093.99	\$6,188.22	\$271,905.77	2.23%	97.77%
	Employer Contributions	\$11,466.94	\$11,466.94	\$0.00		
	Income	\$67,519.47	\$618.51	\$66,900.96		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/1997	End of Year Balance	\$357,080.40	\$18,273.67	\$338,806.73	5.12%	94.88%

Table I
Smith v. Smith Our Case No.: 00000
Joe Smith's NYC Teachers' Retirement System Tax Deferred Annuity
Calculation of Marital and Non-Marital Portions of Account

Date	Transaction	Total Value	Marital Portion	Non-Marital Portion	Marital Percent	Non-Marital Percent
Fixed Funds						
1/1/1998	Beginning Balance	\$40,048.49	\$18,273.67	\$21,774.82	45.63%	54.37%
	Contributions	\$10,535.00	\$10,535.00	\$0.00		
	Conversion From Variable A	\$85,699.00	\$0.00	\$85,699.00		
	Sub Total	\$136,282.49	\$28,808.67	\$107,473.82	21.14%	78.86%
	Income	\$7,562.27	\$1,598.58	\$5,963.69		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/1998	End of Year Balance	\$143,844.76	\$30,407.25	\$113,437.51	21.14%	78.86%
Variable A Annuity Program						
1/1/1998	Beginning Balance	\$317,031.91	\$0.00	\$317,031.91	0.00%	100.00%
	Transfer to Fixed Funds	(\$85,699.00)	\$0.00	(\$85,699.00)		
	Income	\$60,597.22	\$0.00	\$60,597.22		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/1998	End of Year Balance	\$291,930.13	\$0.00	\$291,930.13	0.00%	100.00%
Combined Values						
1/1/1998	Beginning Balance	\$357,080.40	\$18,273.67	\$338,806.73	5.12%	94.88%
	Contributions	\$10,535.00	\$10,535.00	\$0.00		
	Income	\$68,159.49	\$1,598.58	\$66,560.91		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/1998	End of Year Balance	\$435,774.89	\$30,407.25	\$405,367.64	6.98%	93.02%
Fixed Funds						
1/1/1999	Beginning Balance	\$143,844.76	\$30,407.25	\$113,437.51	21.14%	78.86%
	Contributions	\$10,000.00	\$10,000.00	\$0.00		
	Conversion From Variable A	\$101,101.11	\$0.00	\$101,101.11		
	Sub Total	\$254,945.87	\$40,407.25	\$214,538.62	15.85%	84.15%
	Income	\$15,950.25	\$2,528.01	\$13,422.24		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/1999	End of Year Balance	\$270,896.12	\$42,935.26	\$227,960.86	15.85%	84.15%
Variable A Annuity Program						
1/1/1999	Beginning Balance	\$291,930.13	\$0.00	\$291,930.13	0.00%	100.00%
	Transfer to Fixed Funds	(\$101,101.11)	\$0.00	(\$101,101.11)		
	Income	\$43,934.04	\$0.00	\$43,934.04		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/1999	End of Year Balance	\$234,763.06	\$0.00	\$234,763.06	0.00%	100.00%
Combined Values						
1/1/1999	Beginning Balance	\$435,774.89	\$30,407.25	\$405,367.64	6.98%	93.02%
	Contributions	\$10,000.00	\$10,000.00	\$0.00		
	Income	\$59,884.29	\$2,528.01	\$57,356.28		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/1999	End of Year Balance	\$505,659.18	\$42,935.26	\$462,723.92	8.49%	91.51%

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Table I
Smith v. Smith Our Case No.: 00000
Joe Smith's NYC Teachers' Retirement System Tax Deferred Annuity
Calculation of Marital and Non-Marital Portions of Account

Date	Transaction	Total Value	Marital Portion	Non-Marital Portion	Marital Percent	Non-Marital Percent
Fixed Funds						
1/1/2000	Beginning Balance	\$270,896.12	\$42,935.26	\$227,960.86	15.85%	84.15%
	Contributions	\$10,500.00	\$10,500.00	\$0.00		
	Conversion From Variable A	\$155,921.95	\$0.00	\$155,921.95		
	Sub Total	\$437,318.07	\$53,435.26	\$383,882.81	12.22%	87.78%
	Income	\$29,757.92	\$3,636.08	\$26,121.84		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/2000	End of Year Balance	\$467,075.99	\$57,071.34	\$410,004.65	12.22%	87.78%
Variable A Annuity Program						
1/1/2000	Beginning Balance	\$234,763.06	\$0.00	\$234,763.06	0.00%	100.00%
	Transfer to Fixed Funds	(\$155,921.95)	\$0.00	(\$155,921.95)		
	Income	(\$4,625.97)	\$0.00	(\$4,625.97)		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/2000	End of Year Balance	\$74,215.14	\$0.00	\$74,215.14	0.00%	100.00%
Combined Values						
1/1/2000	Beginning Balance	\$505,659.18	\$42,935.26	\$462,723.92	8.49%	91.51%
	Contributions	\$10,500.00	\$10,500.00	\$0.00		
	Income	\$25,131.95	\$3,636.08	\$21,495.87		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/2000	End of Year Balance	\$541,291.13	\$57,071.34	\$484,219.79	10.54%	89.46%
Fixed Funds *						
1/1/2001	Beginning Balance	\$467,075.99	\$57,071.34	\$410,004.65	12.22%	87.78%
	Contributions	\$10,500.00	\$10,500.00	\$0.00		
	Conversion From Variable A	\$74,215.14	\$0.00	\$74,215.14		
	Sub Total	\$551,791.13	\$67,571.34	\$484,219.79	12.25%	87.75%
	Income	\$40,606.44	\$4,972.59	\$35,633.85		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/2001	End of Year Balance	\$592,397.57	\$72,543.93	\$519,853.64	12.25%	87.75%
Variable A Annuity Program *						
1/1/2001	Beginning Balance	\$74,215.14	\$0.00	\$74,215.14	0.00%	100.00%
	Transfer to Fixed Funds	(\$74,215.14)	\$0.00	(\$74,215.14)		
	Income	\$0.00	\$0.00	\$0.00		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/2001	End of Year Balance	\$0.00	\$0.00	\$0.00	0.00%	0.00%
Combined Values *						
1/1/2001	Beginning Balance	\$541,291.13	\$57,071.34	\$484,219.79	10.54%	89.46%
	Contributions	\$10,500.00	\$10,500.00	\$0.00		
	Income	\$40,606.44	\$4,972.59	\$35,633.85		
	Expenses	\$0.00	\$0.00	\$0.00		
12/31/2001	End of Year Balance	\$592,397.57	\$72,543.93	\$519,853.64	12.25%	87.75%
* 2001 - Annual statement missing, figures have been interpolated.						

Table I
Smith v. Smith Our Case No.: 00000
Joe Smith's NYC Teachers' Retirement System Tax Deferred Annuity
Calculation of Marital and Non-Marital Portions of Account

Date	Transaction	Total Value	Marital Portion	Non-Marital Portion	Marital Percent	Non-Marital Percent
Fixed Funds						
1/1/2002	Beginning Balance	\$592,397.57	\$72,543.93	\$519,853.64	12.25%	87.75%
	Credits	\$1,487.49	\$1,487.49	\$0.00		
	Interest/Increment Adjustments	\$12,238.66	\$1,498.72	\$10,739.94		
3/31/2002	Quarter Ending Balance	\$606,123.72	\$75,530.15	\$530,593.57	12.46%	87.54%
Fixed Funds						
4/1/2002	Beginning Balance	\$606,123.72	\$75,530.15	\$530,593.57	12.46%	87.54%
	Credits	(\$495.83)	(\$495.83)	\$0.00		
	Interest/Increment Adjustments	\$12,233.53	\$1,524.44	\$10,709.09		
6/30/2002	Quarter Ending Balance	\$617,861.42	\$76,558.76	\$541,302.66	12.39%	87.61%
Fixed Funds *						
7/1/2002	Beginning Balance	\$617,861.42	\$76,558.76	\$541,302.66	12.39%	87.61%
	Credits	\$0.00	\$0.00	\$0.00		
	Interest/Increment Adjustments	\$12,238.65	\$1,516.48	\$10,722.17		
9/30/2002	Quarter Ending Balance	\$630,100.07	\$78,075.24	\$552,024.83	12.39%	87.61%
* 2002 - 3rd quarter statement missing, figures have been interpolated.						
Fixed Funds						
10/1/2002	Beginning Balance	\$630,100.07	\$78,075.24	\$552,024.83	12.39%	87.61%
	Credits	\$0.00	\$0.00	\$0.00		
	Interest/Increment Adjustments	\$12,238.65	\$1,516.48	\$10,722.17		
12/31/2002	End of Year Balance	\$642,338.72	\$79,591.72	\$562,747.00	12.39%	87.61%
Fixed Funds						
1/1/2003	Beginning Balance	\$642,338.72	\$79,591.72	\$562,747.00	12.39%	87.61%
	Credits	\$0.00	\$0.00	\$0.00		
	Interest/Increment Adjustments	\$13,248.24	\$1,641.58	\$11,606.66		
3/31/2003	Quarter Ending Balance	\$655,586.96	\$81,233.30	\$574,353.66	12.39%	87.61%
Fixed Funds						
4/1/2003	Beginning Balance	\$655,586.96	\$81,233.30	\$574,353.66	12.39%	87.61%
	Credits	\$0.00	\$0.00	\$0.00		
	Interest/Increment Adjustments	\$13,248.24	\$1,641.58	\$11,606.66		
6/30/2003	Quarter Ending Balance	\$668,835.20	\$82,874.88	\$585,960.32	12.39%	87.61%
Fixed Funds						
7/1/2003	Beginning Balance	\$668,835.20	\$82,874.88	\$585,960.32	12.39%	87.61%
	Credits	\$0.00	\$0.00	\$0.00		
	Interest/Increment Adjustments	\$13,248.24	\$1,641.58	\$11,606.66		
9/30/2003	Quarter Ending Balance	\$682,083.44	\$84,516.46	\$597,566.98	12.39%	87.61%
Fixed Funds						
10/1/2003	Beginning Balance	\$682,083.44	\$84,516.46	\$597,566.98	12.39%	87.61%
	Credits	\$0.00	\$0.00	\$0.00		
	Interest/Increment Adjustments	\$13,248.24	\$1,641.58	\$11,606.66		
12/31/2003	End of Year Balance	\$695,331.68	\$86,158.04	\$609,173.64	12.39%	87.61%

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Since the participant retired in 2002 and there were no further contributions after 1/1/2004 and the marital and non-marital percentages remain the same, we have eliminated several pages of the report for the purposes of this example.

Table I
Smith v. Smith Our Case No.: 00000
Joe Smith's NYC Teachers' Retirement System Tax Deferred Annuity
Calculation of Marital and Non-Marital Portions of Account

Date	Transaction	Total Value	Marital Portion	Non-Marital Portion	Marital Percent	Non-Marital Percent
NOTE: For the period January 1, 2004 through the ending balance of March 31, 2013, the marital and non-marital percentages remain the same. Therefore, for the purposes of this seminar, we chose to skip the entries for the period January 1, 2004 through December 31, 2011 and continue this Tracing Method with the last page of entries beginning January 1, 2012.						
	Fixed Funds					
1/1/2012	Beginning Balance	\$1,280,112.79	\$158,617.84	\$1,121,494.95	12.39%	87.61%
	Credits	\$0.00	\$0.00	\$0.00		
	Interest/Increment Adjustments	\$22,401.96	\$2,775.81	\$19,626.15		
3/31/2012	Quarter Ending Balance	\$1,302,514.75	\$161,393.65	\$1,141,121.10	12.39%	87.61%
	Fixed Funds					
4/1/2012	Beginning Balance	\$1,302,514.75	\$161,393.65	\$1,141,121.10	12.39%	87.61%
	Credits	\$0.00	\$0.00	\$0.00		
	Interest/Increment Adjustments	\$22,401.96	\$2,775.81	\$19,626.15		
6/30/2012	Quarter Ending Balance	\$1,324,916.71	\$164,169.46	\$1,160,747.25	12.39%	87.61%
	Fixed Funds *					
7/1/2012	Beginning Balance	\$1,324,916.71	\$164,169.46	\$1,160,747.25	12.39%	87.61%
	Credits	\$0.00	\$0.00	\$0.00		
	Interest/Increment Adjustments	\$22,401.96	\$2,775.81	\$19,626.15		
9/30/2012	Quarter Ending Balance	\$1,347,318.67	\$166,945.27	\$1,180,373.40	12.39%	87.61%
	* 2012 - 3rd quarter statement missing, figures have been interpolated.					
	Fixed Funds					
10/1/2012	Beginning Balance	\$1,347,318.67	\$166,945.27	\$1,180,373.40	12.39%	87.61%
	Credits	\$0.00	\$0.00	\$0.00		
	Interest/Increment Adjustments	\$22,401.96	\$2,775.81	\$19,626.15		
12/31/2012	End of Year Balance	\$1,369,720.63	\$169,721.08	\$1,199,999.55	12.39%	87.61%
	Fixed Funds					
1/1/2013	Beginning Balance	\$1,369,720.63	\$169,721.08	\$1,199,999.55	12.39%	87.61%
	Credits	\$0.00	\$0.00	\$0.00		
	Interest/Increment Adjustments	\$23,970.09	\$2,970.12	\$20,999.97		
3/31/2013	Quarter Ending Balance	\$1,393,690.72	\$172,691.20	\$1,220,999.52	12.39%	87.61%

Tracing Method: As of the parties' date of marriage of June 30, 1996, the amount of the Husband's pre-marital funds was \$266,336.48. As of the date of commencement of the divorce action of March 31, 2013, the percentage and dollar value of his account representing the non-marital portion is 87.61% or \$1,220,999.52. The percentage and dollar value of the account representing the marital portion of the account as of March 31, 2013, that is subject to equitable distribution, is 12.39% or \$172,691.20, of which the Wife is entitled to \$86,345.60.

Subtraction Method: Account balance as of the date of commencement of the divorce action of March 31, 2013 was \$1,393,690.72, **minus** the Husband's pre-marital funds of \$266,336.48, equals \$1,127,354.24 which would be subject to equitable distribution, of which the Wife would be entitled to \$563,677.12.

Coverture Method: Using the Coverture Method yields a marital fraction of 16.77% (5.59 years married while employed, divided by 33.34 years employed at retirement, equals 16.77%). 16.77% of \$1,393,690.72 is \$233,721.93. The Wife's one-half would be \$116,860.97.

OFFSET CALCULATIONS

The following are samples of offset calculations as follows:

- **Table I** - presents the offset calculations of ALL RETIREMENT BENEFITS held by each party.
- **Table II** – presents the offset calculations of only the DEFINED BENEFIT PLAN benefits held by each party.
- **TABLE III** – presents the offset calculations of only the DEFINED CONTRIBUTION PLAN benefits held by each party.

TABLE I

Example of the Offset Calculations of ALL retirement assets held by each party.

Parties' Date of Marriage: November 16, 2002

Marital Asset Cutoff Date: October 1, 2010

Table I	
Case: Smith v. Smith Our QDRO File No. 12345	
Offset Calculations of All Retirement Benefits Held by Each Party	
James Smith is an active member of the New York City Police Pension Fund, Article II.	
Total Present Value of James Smith's NYPD Pension Fund benefit, determined as of Oct. 1, 2010.	\$420,189.27
Total Present Value of the Marital Portion of James Smith's NYPD benefit, determined as of Oct. 1, 2010.	\$357,745.51
Outstanding Loan balance against James Smith's NYPD pension as of Oct. 1, 2010.	(\$15,458.78)
Marital Portion of James Smith's Variable Supplement Fund (VSF) benefit as of Oct. 1, 2010.	\$95,225.62
That portion of James Smith's Patrolmen's Benevolent Association (PBA) Annuity Fund that accumulated during the parties' marriage, as of Oct. 1, 2010.	\$4,722.51
That portion of James Smith's 457 deferred comp. account in The Deferred Compensation Plan/NYCE IRA for the City of New York and Related Agencies and Instrumentalities, determined as of Oct. 1, 2010.	\$30,116.35
Total Dollar Value of the Marital Portion of James Smith's Retirement Benefits as of Oct. 1, 2010.	\$472,351.21
It is our understanding that Carol Smith is an active member of the New York City Police Pension Fund, Article II. As of December 13, 2010 (the date of the present value analysis prepared by Lexington Pension Consultants), Ms. Smith was eligible for immediate retirement.	
Total Present Value of Carol Smith's NYPD Pension Fund benefit, determined as of Oct. 1, 2010.	\$1,815,454.99
Marital Portion of Carol Smith's NYPD Benefit, determined as of Oct. 1, 2010.	\$716,122.42
Outstanding Loan balance against Carol Smith's NYPD pension as of Oct. 1, 2010.	(\$33,773.90)
Marital Portion of Carol Smith's Variable Supplement Fund (VSF) benefit as of Oct. 1, 2010.	\$136,307.65
That portion of Carol Smith's 457 deferred comp. account in The Deferred Compensation Plan / 401(k) / NYCE IRA for the City of New York and Related Agencies and Instrumentalities, determined as of Oct. 1, 2010.	\$64,277.54
That portion of Carol Smith's 401(a) account in The Deferred Compensation Plan / 401(k) / NYCE IRA for the City of New York and Related Agencies and Instrumentalities, determined as of Oct. 1, 2010.	\$4,252.78
That portion of Carol Smith's Superior Officers Council (SOC) Annuity Fund that accumulated during the parties' marriage, as of Oct. 1, 2010.	\$17,326.76
Total Dollar Value of the Marital Portion of Carol Smith's Retirement Benefits as of Oct. 1, 2010.	\$904,513.25
50% of Wife's Benefits Owed to Husband	\$452,256.63
50% of Husband's Benefits Owed to Wife	\$236,175.61
Husband's Reduced Share of the Wife's NYPD Pension Fund benefit after Offset: (\$452,256.63 minus \$236,175.61 = \$216,081.02)	\$216,081.02
Reduced Percentage of Marital Portion to be Awarded to Husband After Offset (\$216,081.02 ÷ \$716,122.42)	
After the offset of the retirement benefits held by each party, instead of 50% of the marital portion, the Husband's reduced percentage of the marital portion of the Wife's New York City Police Pension Fund benefit, via the Majauskas formula, is 30.17%	30.17%
Suggested Stipulation/Agreement language: It is the parties' intent to offset the retirement benefits of each party and prepare one QDRO written against the Wife's Pension Plan. Carol Smith (Wife) is an active participant in the New York City Police Pension Fund, Article II. James Smith (Husband) is an active member of the New York City Police Pension Fund, Article II. It is the parties' intent that the marital portion of the Husband's retirement benefits shall be reduced/offset against the marital portion of the Wife's retirement benefits, so that upon Carol Smith's actual retirement from the New York City Police Pension Fund, the Husband would receive a reduced percentage, that being 30.17% of the marital portion of the Wife's Police Pension benefit, in accordance with the formula devised in the case of Majauskas v. Majauskas, 61 N.Y.2d 481 (1984), representing the parties' equitable distribution of their pension plans/retirement benefits.	

TABLE II

Example of the Offset Calculations of the *DEFINED BENEFIT PLAN* benefits held by each party.

Parties' Date of Marriage: November 16, 2002

Marital Asset Cutoff Date: October 1, 2010

Table II	
Case: Smith v. Smith Our QDRO File No. 12345	
Offset Calculations of Defined Benefit Plans and VSF Benefits Only	
James Smith is an active member of the New York City Police Pension Fund, Article II.	
Total Present Value of James Smith's NYPD Pension Fund benefit, determined as of Oct. 1, 2010.	\$420,189.27
Total Present Value of the Marital Portion of James Smith's NYPD benefit, determined as of Oct. 1, 2010.	\$357,745.51
Outstanding Loan balance against James Smith's NYPD pension as of Oct. 1, 2010.	-\$15,458.78
Marital Portion of James Smith's Variable Supplement Fund (VSF) benefit as of Oct. 1, 2010.	\$95,225.62
Total Dollar Value of the Marital Portion of James Smith's Retirement Benefits as of Oct. 1, 2010.	\$437,512.35
It is our understanding that Carol Smith is an active member of the New York City Police Pension Fund, Article II As of December 13, 2010 (the date of the present value analysis prepared by Lexington Pension Consultants), Ms. Smith was eligible for immediate retirement.	
Total Present Value of Carol Smith's NYPD Pension Fund benefit, determined as of Oct. 1, 2010.	\$1,815,454.99
Marital Portion of Carol Smith's NYPD Benefit, determined as of Oct. 1, 2010.	\$716,122.42
Outstanding Loan balance against Carol Smith's NYPD pension as of Oct. 1, 2010.	(\$33,773.90)
Marital Portion of Carol Smith's Variable Supplement Fund (VSF) benefit as of Oct. 1, 2010.	\$136,307.65
Total Dollar Value of the Marital Portion of Carol Smith's Retirement Benefits as of Oct. 1, 2010.	\$818,656.17
50% of Wife's Benefits Owed to Husband	\$409,328.09
50% of Husband's Benefits Owed to Wife	\$218,756.18
Husband's Reduced Share of the Wife's NYPD Pension Fund Benefit After Offset: (409,328.09 minus \$218,756.18)	\$190,571.91
Reduced Percentage of Marital Portion to be Awarded to Husband After Offset (\$190,571.91 ÷ \$716,122.42).	
After the offset of pension benefits, instead of 50% of the marital portion, the Husband's reduced percentage of the marital portion of the Wife's New York City Police Pension Fund benefit via the Majauskas Formula, is 26.61%.	26.61%
Suggested Stipulation/Agreement language: It is the parties' intent that the marital portion of the Husband's New York City Police Pension Fund benefit shall be reduced/offset against the marital portion of the Wife's New York City Police Pension Fund benefit, so that upon the Wife's actual retirement from the New York City Police Pension Fund, the Husband would receive a reduced percentage, that being 26.61% of the marital portion of the Wife's Police Pension benefit, in accordance with the formula devised in the case of Majauskas v. Majauskas, 61 N.Y.2d 481 (1984), representing the parties' equitable distribution of their pension plan benefits. The Husband shall be entitled to this benefit via a Domestic Relations Order written against the Wife's New York City Police Fund benefit.	

TABLE III

Example of the Offset Calculations of the *DEFINED CONTRIBUTION PLANS* held by each party.

Parties' Date of Marriage: November 16, 2002

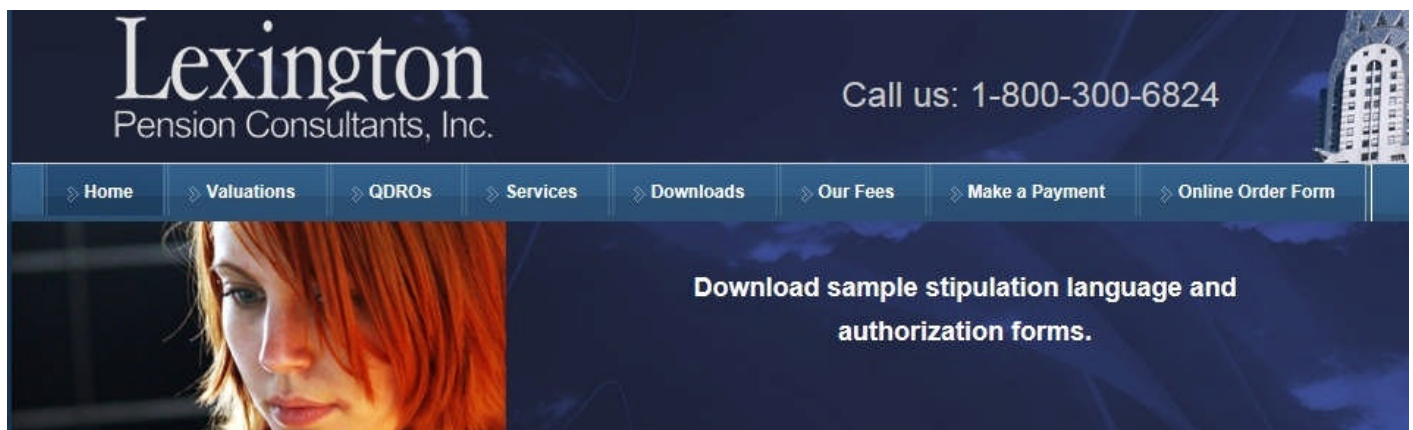
Marital Asset Cutoff Date: October 1, 2010

Table III	
Case: Smith v. Smith Our QDRO File No. 12345	
Offset Calculations of Defined Contribution Plans Held by Each Party	
James Smith is an active member of the New York City Police Pension Fund, Article II.	
That portion of James Smith's Patrolmen's Benevolent Association (PBA) Annuity Fund that accumulated during the parties' marriage, as of Oct. 1, 2010.	\$4,722.51
That portion of James Smith's 457 deferred comp. account in The Deferred Compensation Plan/NYCE IRA for the City of New York and Related Agencies and Instrumentalities, determined as of Oct. 1, 2010.	\$30,116.35
Total Dollar Value of the Defined Contribution Type Plans of James Smith as of Oct. 1, 2010.	\$34,838.86
It is our understanding that Carol Smith is an active member of the New York City Police Pension Fund, Article II As of December 13, 2010 (the date of the present value analysis prepared by Lexington Pension Consultants), Ms. Smith was eligible for immediate retirement.	
That portion of Carol Smith's 457 deferred comp. account in The Deferred Compensation Plan / 401(k) / NYCE IRA for the City of New York and Related Agencies and Instrumentalities, determined as of Oct. 1, 2010.	\$64,277.54
That portion of Carol Smith's 401(a) account in The Deferred Compensation Plan / 401(k) / NYCE IRA for the City of New York and Related Agencies and Instrumentalities, determined as of Oct. 1, 2010.	\$4,252.78
That portion of Carol Smith's Superior Officers Council (SOC) Annuity Fund that accumulated during the parties' marriage, as of Oct. 1, 2010.	\$17,326.76
Total Dollar Value of the Defined Contribution type plans of Carol Smith as of Oct. 1, 2010.	\$85,857.08
50% of Wife's Benefits Owed to Husband	\$42,928.54
50% of Husband's Benefits Owed to Wife	\$17,419.43
Total Dollar Value Owed to Husband After Offset of Defined Contribution Plans: (\$42,928.54 minus \$17,419.43)	\$25,509.11
After the offset and equalization of the defined contribution accounts held by each party, one domestic relations order may be written to award the Husband \$25,509.11 from the Wife's 457 Deferred Compensation Account determined as of October 1, 2010 together with earnings and/or losses as determined by the Plan, from October 1, 2010, until such time as an account is established for the Husband. If the Wife has taken out any loans that may affect the husband's share of the account, these loans shall not affect the Husband's award.	

www.lexpen.com

For the convenience of our clients we have created a website where you can download much of the material discussed in this seminar. Get pre-addressed authorization forms for many of the larger employers in the metropolitan area, or download settlement agreement language for various types of plans. You can even log on to review the current status of all the cases that we may be working on for your firm.

Step 1: If you wish to access information about the status and history of your cases, download sample settlement agreement language, or create an online request form, just enter your Username and Password in the spaces indicated below.



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Contact Information
and phone numbers

Lexington Pension Consultants, Inc.
2078 Richmond Avenue
Staten Island, New York 10314
Tel: 718.697.0100
Fax: 718.697.1955
Toll Free: 800.300.6824

Welcome to Lexington Pension Consultants

Lexington Pension Consultants, Inc. is a litigation support firm specializing in the preparation of Qualified Domestic Relations Orders (QDROs) and Pension Valuations for equitable distribution purposes. We have been valuing pensions and preparing QDROs for over 26 years. We have been appointed by the Courts as neutral experts in thousands of matrimonial matters. We currently provide our services to more than 5,000 matrimonial practitioners. We also provide expert testimony when necessary.

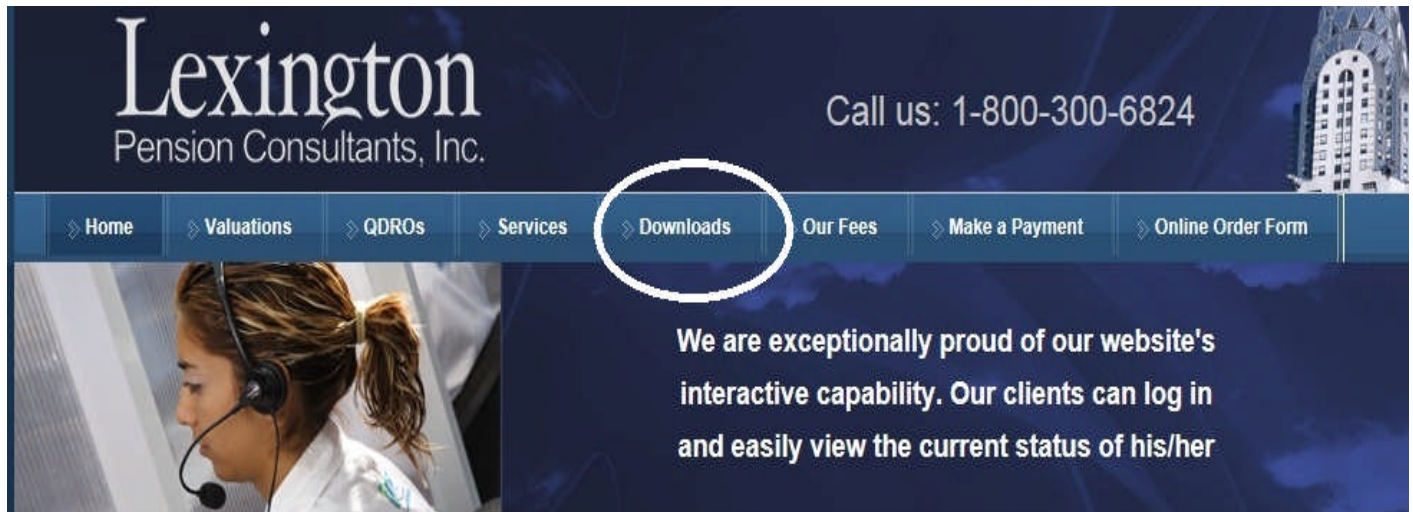


Office Hours

Monday - Thursday - 9am to 5pm
Friday - Closed

- ▶ Replacing Lost Benefits
- ▶ Defined Benefit Plans - Determining Present Value
- ▶ Disability Benefits
- ▶ Defined Contribution Plans

Step 2: After you have entered your username and password you now have the choice of viewing the status and history of your cases, or downloading forms or settlement language.



Welcome to Lexington Pension Consultants

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Friday - ~~CLOSED~~

- ▶ Replacing Lost Benefits
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- ▶ Disability Benefits
- ▶ Defined Contribution Plans

Step 4: You will be presented with a listing of all recent cases that you have with our firm, both as primary requestor or opposing attorney. You may then click on the blue case number for a detailed presentation of the current status and history of the case.



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Cases as Primary Attorney

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[PENDING: Balance Due](#)
[Hold](#)
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Case #	Case Name	Subject Name	Case Type	Date Opened
30767	Newbie v. Newbie	Donald Newbie	QDRO	3/24/2009
30766	Smith v. Smith	Donald Smith	QDRO	3/24/2009
10010	Needleman v. Needleman	Jessica Needleman	QDRO	1/22/2011
10002	Chumley v. Chumley	Willy Chumley	QDRO	4/7/2011

Open

Cases as Opposing Attorney

[Open](#)
[PENDING: Balance Due](#)
[Hold](#)
[Closed](#)

Case #	Case Name	Subject Name	Case Type	Date Opened
10003	Miller v. Miller	Barney Miller	QDRO	4/18/2011

Step 5: This page presents the status and history of your case. If there is any missing or erroneous information presented, you may click the change button, edit the information as necessary and send it to us immediately. You may also download completed reports or DROs.

Download sample stipulation language and authorization forms.
5 Docs

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Data is current as of : 10/18/2011 1:30:08 PM

View/Print Case Documents

CASE ID #: 30767
COURT ORDERED: 0

Case Name: Newbie v. Newbie
Subject Name: Donald Newbie
Client is: Wife
Plan Name: Electrical Industry - IBEW Local #3 Defined Contribution Plans - QDROs

Case Type: ODRO
Date Open: 3/24/2009
Case Status: OPEN
Date Closed: 6/9/2009

YOUR CASE REPRESENTATIVE INFORMATION
Rep Name: Connie Truncali
Rep Phone: 718.889.7325
Rep Email: ctruncali@lexpen.com

Billing Details	Billing	Paid	Date Paid	Balance
Total Billed	\$500.00	\$500.00		\$0.00
Wife	\$500.00	\$500.00	4/2/2009	\$0.00
Husband	\$0.00	\$0.00		\$0.00

\$ 0 or enter other amount you wish to pay show payment form

Open

Retaining Counsel Info

Name: Earnest Desire
Firm: The Earnest Desire Law Firm
Address: 2078 Richmond Avenue, Staten Island, NY - 10314
Phone: 718-697-0100
Fax: 718-697-1955
Email: demo

Opposing Counsel Info

Name: Hedda Longday
Firm: Attorney at Law
Address: 1234 Main Street, Newtown, PA - 12345
Phone: 1-570-555-555
Fax: 1-570-666-666
Email: lexpen

Relevant Dates CHANGE

Date Of Marriage: 5/2/1988
Date Of Action: 2/6/2007
Date Of Divorce:
Cutoff Date: 2/6/2007
Date Of Hire: 4/13/1987

Judge/Court Info CHANGE

County: Queens
Index #: 2526/2007
Judge Name:
Plaintiff: Mildred Newbie
Defendant: Donald Newbie

Participant Info CHANGE

Name: Donald Newbie
Date Of Birth: 2/22/1960
Address: 224-26 111th Avenue, Queens Village, NY 11429
SSN: 123-45-6987

Alternate Payee Info CHANGE

Name: Mildred Newbie
Date Of Birth: 6/25/1958
Address: 123 Airport Road, Pittstown, NJ 08867
SSN: 987-65-4321

Current status of the case


Not waiting for anything. Case open for demonstration purposes only.

Comments

Case Activity History

3/26/09 - Case folder setup complete, case with representative for initial review.
 3/27/09 - Invoice faxed to Mr. Desire
 4/2/09 - Received payment in full.
 4/8/09 - left voicemail message for Mr. Desire requesting that he refax to us the relevant pages from the agreement.
 4/20/2009 - FOLLOW-UP NOTIFICATION SENT TO PRIMARY ATTORNEY(S).
 4/13/09 - Received better copy of stip
 4/24/09 - Draft prepared and under review.
 4/28/09 - Draft faxed to Mr. Desire for review/approval; also waiting for Mr. Desire to confirm whether the additional plans are to be split; if so, they can be inserted into the Order.
 4/28/09 - Received call back from Mr. Desire who confirmed all defined contribution plans should be in this Order; revised draft and faxed to Mr. Desire for review/approval.
 5/5/09 - Received Mr. Desire's approval of draft.
 5/7/09 - Draft sent to Plan for pre-approval
 6/2/09 - Revised draft faxed to Mr. Desire for review/approval
 6/3/09 - received Mr. Desire's approval of draft
 6/3/09 - Draft faxed to Plan for pre-approval
 6/8/09 - Received Plan approval letter 5/19/2010 - MONTHLY NOTIFICATION SENT TO ATTORNEY(S). 6/23/2010 -


Downloads: You may download blank or preaddressed authorization forms, sample reports, or a listing of our fees.

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Listed below are various pre-addressed authorization forms available in PDF format. To download a document, just click on the link below. Several of these links contain multiple authorization forms for all of the plans available under that employer/plan. Please have your client sign only those forms for plans in which he/she actually participates in or formerly participated in. Each download contains a cover page which includes general guidelines / instructions about the plan(s).

[Pensions Appraisal Fact Sheet](#) 

[QDRO Fact Sheet](#) 

[General Authorization Form](#) 

[Electrical Industry Forms Package](#) 

[Federal Employees Forms Package](#) 

[New Jersey Public Employees' Retirement System](#) 

[New Jersey Police & Fire Retirement System](#) 

[New Jersey State Teachers' Pension & Annuity Fund \(TPAF\)](#) 

[New Jersey State Transit Employees' Retirement Plan \(NJTERP\)](#) 

[New York State & Local Employees' Retirement System](#) 

[New York State Police & Fire Retirement System](#) 

[New Jersey Carpenters Forms Package](#) 

[Long Island Rail Road / Railroad Retirement Board](#) 


[Keyspan / National Grid Forms Package](#) 

[NYC Police Department \(NYPD\) Forms Package](#) 

[NYC Fire Department \(NYFD\) Forms Package](#) 

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You may also download sample settlement language, in either Word or PDF formats.

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Listed below are sample property settlement agreement clauses as they pertain to ERISA and Non ERISA defined benefit and defined contribution plans. We have also included suggested clauses for specific plans.


[ERISA Defined Benefit Plans](#)  

[ERISA Defined Contribution Plans](#)  

[New York City Employees' Retirement System \(NYCERS\)](#)  

[New York City Police Department \(NYPD\)](#)  

[New York City Fire Department \(NYFD\)](#)  


[NJ Public Employees' Retirement System](#)  

[Long Island Rail Road](#)  

[Electrical Industry - Local #3](#) 


[Railroad Retirement Board \(RRB\)](#)  

You can even prepare a request for services form, online.




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We have been valuing pensions and preparing QDROs for over 26 years.




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Fill Online Forms

Form Details

Select Order Type

Select the Order type to be filling out the form

QDRO ORDER

Ordering online will assist in expediting the process of providing services in regard to the preparation of Qualified Domestic Relations Orders (QDROs). In order to complete this process, information in addition to that provided in our online form may be required. For example, if a QDRO is requested, in addition to the online information, we will require the relevant portions of the parties' Property Settlement Agreement or the relevant portion of the divorce decree. Once we receive this online information, you will be contacted to facilitate the completion of this process.

Party You Represent

Please select which party you represent

Husband

Select client Type

Please select if your client is the Petitioner or the Respondent

Plaintiff/Petitioner

Case Heading:

(e.g. Mary Jones v. Harry Jones)

Smith v. Smith

Jurisdiction:

Please select your state of jurisdiction

New York

Share information with opposing party?

May we share information with the opposing party?

Share information with opposing party

Your Information

Please add the main Attorney information here

Attorney Last Name

Enter Attorney's last name

Earnest

Attorney First Name

Please enter Attorney name

Desire

Attorney Email Address

enter email address

Attorney Firm Name

The firm Attorney works for

The Earnest Desire Law Firm

Address

Attorney's Mailing Address

2078 Richmond Avenue

City

Address City

Staten Island

State

Address State

NY

Zipcode

Address Zipcode

10314

Telephone Number

Attorney's Telephone Number

718-697-0100

POPULAR PLANS IN THE METROPOLITAN AREA

The Overview and Specific Stipulation Language has been provided regarding the following plans:

- New York State & Local Employees' Retirement System (NYS&LRS)
- New York State & Local Police and Fire Retirement System (NYS&LPFRS)
- New York State Teachers' Retirement System (NYSTRS)
- Civil Service Retirement System (CSRS)
- Federal Employees' Retirement System (FERS)
- New York City Employees' Retirement System (NYCERS)
- New York City Police Pension Fund, Article II
- New York City Fire Department Pension Fund, Article 1-B
- Teachers' Retirement System of the City of New York (TRS)
- The Long Island Rail Road Company (LIRR) Pension Plan and The Long Island Rail Road Company Plan for Additional Pensions
- The Railroad Retirement Board (RRB)
- The MTA Defined Benefit Pension Plan
- Pension Trust Fund of the Pension, Hospitalization and Benefit Plan of the Electrical Industry – Local Union #3 of the JIB
- The Defined Contribution Plans sponsored by Local Union #3 of the Joint Industry Board:
 - Annuity Plan of the Electrical Industry
 - Additional Security Benefits Plan (ASBF) of the Electrical Industry
 - Deferred Salary Plan (DSP) of the Electrical Industry
 - Health Reimbursement Account (HRA)
- The International Brotherhood of Electrical Workers' Pension Benefit Fund (IBEW PBF)
- The National Electrical Benefit Fund (NEBF)

Plan Names:

New York State & Local Employees' Retirement System (NYS&LRS)

New York State & Local Police and Fire Retirement System (NYS&LPFRS)

New York State Teachers' Retirement System (NYSTRS)

General Plan Information:

- These are defined benefit type plans not under the guidelines of ERISA.
- **NOTE: PARTIES MUST BE DIVORCED FOR THE PENSION FUNDS TO IMPLEMENT AN ORDER. PROOF OF DIVORCE IS REQUIRED.**
- These Plans only accept a **Shared Interest** Order.

Related Plans:

- Deferred Compensation Plan for Employees of the State of New York and Other Participating Public Jurisdictions
- Deferred Compensation Plan for Employees of the County of Nassau and Other Participating Public Jurisdiction
- Suffolk County Public Employees Deferred Compensation Plan c/o T. Rowe Price
- Suffolk County Public Employees Deferred Compensation Plan c/o AIG/VALIC
- Severance Pay Benefits for eligible NYS&LPFRS members.
- **FOR NEW YORK STATE TEACHERS:** Members may voluntarily participate in one or more 403(b) defined contribution type plans that are sponsored by his/her School District. If a member does have one or more 403(b) accounts, in order to conduct independent discovery, a separate authorization directed to each 403(b) investment company would be required. For QDRO purposes, a separate Order would be required for each 403(b) account.

Separate or Shared Domestic Relations Order (DRO):

These Plans only accepts a Shared Interest Order.

Suggested Agreement Language:

Award: "The Alternate Payee's distribution shall be ____% of a fraction for which the numerator shall be the total number of months of credited service between the Participant's date of initial credited service in the Plan, or the date of the parties' marriage, that being ____, whichever is later, up to the date of the division of marital assets, that being ____, and the denominator shall be the total number of months of credited service in the Plan which the Participant has at the time retirement, death or termination."

COLA: "The Alternate Payee's award shall include any annuity as well as supplemental retirement allowance or cost of living adjustment which is paid by the said Plan to Participant."

Loans: "The Alternate Payee's share of the pension shall not be impacted by reductions to the Participant's pension for any outstanding loans at the time of the Participant's retirement."

Disability: "Should the Participant retire on a disability retirement benefit from the Plan, the Plan is hereby directed to calculate the Alternate Payee's share, identified above, using a hypothetical service retirement benefit, based on the Participant's earnings and years of credited service, without any reduction for ordinary termination of employment."

Pre-retirement death benefit: "The Participant is directed to designate the Alternate Payee as beneficiary of Plan, so that in the event the Participant dies prior to retirement,

the Alternate Payee shall receive a pro rata share of any available pre-retirement death benefit calculated pursuant to the coverture fraction **-OR-** _____% of any available pre-retirement death benefit.”

Post-retirement death benefit: “The Participant is directed to elect at the time of retirement, assuming the Alternate Payee is then living, to receive benefits pursuant to the terms of a Special Joint Allowance Option for the purpose of providing the Alternate Payee, upon the Participant's death, with a monthly retirement benefit payable for life based upon the distribution calculated pursuant to the coverture fraction.” **-OR-** See other retirement options (attached).

Cost of Post-retirement death benefit: The cost of the Participant's retirement option election shall be shared proportionately between the Participant and Alternate Payee **-OR-** shall be shared equally by the parties **-OR-** shall be borne solely by the Participant **-OR-** Alternate Payee.”

Cost of Pop-Up Option: “Any cost associated with the Participant's election of the pop-up feature shall be shared proportionately between the Participant and Alternate Payee – **OR-** shall be shared equally by the parties **-OR-** shall be borne solely by the Participant – **OR-** Alternate Payee.”

Return of Contributions: “If the Participant receives a return of any contributions, or if the Participant is eligible for and elects to receive a partial lump sum (PLS) payment, the Alternate Payee is entitled to a pro-rata share of any returned contributions payable to the Participant based on the coverture fraction.”

Post-Retirement Death Benefit Options

New York State & Local Employees' Retirement System (NYS&LRS) and/or New York State & Local Police and Fire Retirement System (NYS&LPFRS)

Note: By operation of law, upon the death of an ex-spouse, all payments revert back to the Participant.

Note: After meeting COLA eligibility requirements, a spouse of a deceased retiree who is the beneficiary under a survivorship option, is entitled to one-half the COLA amount that would have been paid to the retiree. COLA payments to an ex-spouse will cease upon the Participant's death.

Single Life Allowance (all tiers)

This option provides the maximum benefit. All payments will stop upon the Participant's death. The proportionate amount of the monthly allowance owed to the Participant as of the date of death will be payable to the Participant's ordinary death benefit beneficiary(ies). For Tier 1 members, ordinary death benefit designations may only be changed prior to retirement.

***Joint Allowance - Full (all tiers)**

This option provides the Participant with a reduced lifetime benefit based on the Participant's and the option beneficiary's dates of birth. If the Participant dies, the option beneficiary will receive the Participant's total monthly benefit for the rest of his or her life. If the option beneficiary dies before the Participant, all payments will stop at the Participant's death. The Participant can designate only one option beneficiary and the option beneficiary cannot be changed.

***Joint Allowance - Half (all tiers)**

This option provides the Participant with a reduced lifetime benefit based on the Participant's and the option beneficiary's dates of birth. If the Participant dies, the option beneficiary will receive one-half of the Participant's monthly benefit for the rest of his or her life. If the option beneficiary dies before the Participant, all payments will stop at the Participant's death. The Participant can designate only one option beneficiary and the option beneficiary cannot be changed.

***Pop Up/Joint Allowance - Full (all tiers)**

This option provides the Participant with a reduced lifetime benefit based on the Participant's and the option beneficiary's dates of birth. If the Participant dies, the option beneficiary will receive the Participant's total monthly benefit for the rest of his or her life. If the option beneficiary dies before the Participant, the Participant's benefit is increased to the amount that would have been payable under the Single Life Allowance option, and all payments will stop at the Participant's death. The Participant can designate only one option beneficiary and the option beneficiary cannot be changed.

***Pop Up/Joint Allowance - Half (all tiers)**

This option provides the Participant with a reduced lifetime benefit based on the Participant's and the option beneficiary's dates of birth. If the Participant dies, the option beneficiary will receive one-half of the Participant's monthly benefit for the rest of his or her life. If the option beneficiary dies before the Participant, the Participant's benefit is increased to the amount that would have been payable under the Single Life Allowance option, and all payments stop at the Participant's death. The Participant can designate only one option beneficiary and the option beneficiary cannot be changed.

***Joint Allowance - Partial (Tiers 3 and 4)**

This option provides the Participant with a reduced lifetime benefit based on the Participant's and the option beneficiary's dates of birth. The Participant must elect the continuance of 75, 50 or 25 percent of the retirement benefit payable to the option beneficiary. If the Participant dies, the option beneficiary will receive 75, 50 or 25 percent of the amount the Participant had been receiving for the rest of his or her life. If the option beneficiary dies before the Participant, all payments stop at the Participant's death. The Participant can designate only one option beneficiary and the option beneficiary cannot be changed.

***Special Joint Allowance**

This option provides the Participant with a reduced lifetime benefit based on the Participant's and the option beneficiary's dates of birth. The continuance payable to the option beneficiary after the Participant's date of death is customized. This election is typically required if the Participant is directed to provide the ex-spouse with a continued marital share of the retirement benefit. If the option beneficiary dies before the Participant, all payments stop at the Participant's death. The Participant can designate only one option beneficiary and the option beneficiary cannot be changed.

***Pop Up/Special Joint Allowance**

This option provides the Participant with a reduced lifetime benefit based on the Participant's and the option beneficiary's dates of birth. The continuance payable to the option beneficiary after the Participant's date of death is customized. This election is typically required if the Participant is directed to provide the ex-spouse with a continued

marital share of the retirement benefit. If the option beneficiary dies before the Participant, the Participant's benefit is increased to the amount that would have been payable under the Single Life Allowance option and all payments stop at the Participant's death. The Participant can designate only one option beneficiary and the option beneficiary cannot be changed.

*The Plan requires documentary proof of the beneficiary's date of birth if this option is selected.

Five Year Certain (all tiers)

This option provides the Participant with a reduced lifetime benefit and the additional guarantee that, if he or she lives for less than five years after retirement, payments in the same amount he or she was receiving (without COLA) will be made to the option beneficiary(ies) for the balance of the five-year period. If the Participant lives more than five years after retirement, he or she will continue to receive payments for his or her lifetime, but no payments will be made to any option beneficiary(ies) or estate when the Participant dies. The option beneficiary(ies) may be changed at any time. If the option beneficiary(ies) dies within the five-year period and the Participant dies without naming a new option beneficiary(ies), any amount payable will be paid to the Participant's estate.

Ten Year Certain (all tiers)

This option provides the Participant with a reduced lifetime benefit and the additional guarantee that, if he or she lives for less than ten years after retirement, payments in the same amount he or she was receiving (without COLA) will be made to the option beneficiary(ies) for the balance of the ten-year period. If the Participant lives more than ten years after retirement, he or she will continue to receive payments for his or her lifetime, but no payments will be made to any option beneficiary(ies) or estate when the Participant dies. The option beneficiary(ies) may be changed at any time. If the option beneficiary(ies) dies within the ten-year period and the Participant dies without naming a new option beneficiary(ies), any amount payable will be paid to the Participant's estate.

Cash Refund - Contributions (Tiers 1 & 2)

If the Participant dies before receiving annuity payments equal to his or her accumulated contributions, the option beneficiary(ies) will receive the accumulated contributions balance. The option beneficiary(ies) may choose payment either as a lump sum or as a monthly payment that ends when the balance is exhausted. The pension portion of the Participant's benefit will cease at his or her death. The option beneficiary(ies) may be changed at any time.

Cash Refund - Initial Value (Tier 1)

If the Participant dies before receiving retirement benefit payments equal to the initial value of his or her benefit, the balance will be paid to the option beneficiary(ies). The option beneficiary(ies) may choose payment as either a lump sum or a monthly benefit that ends when the remainder of the calculated value of the benefit is exhausted. The beneficiary(ies) may be changed at any time.

Partial Lump Sum Option (PLS)

Article 21 of the Retirement and Social Security Law established a new retirement option for certain Police and Fire Retirement System members. The PLS allows eligible

Participants to receive a portion of their retirement benefit in a lump sum at retirement, resulting in a reduced monthly benefit. Eligible Participants who choose PLS must also choose an option for the payment of their monthly benefit. A Participant with a DRO can choose the PLS option. If the DRO addresses the PLS, the Retirement System will review the terms of the DRO and comply with the order. If the DRO does not address the PLS, the ex-spouse's share will be calculated as if no PLS was taken. The Retirement System will use a hypothetical calculation to determine the ex-spouse's share to avoid reductions resulting from the Participant's PLS election. The ex-spouse will receive the same amount that the Judge ordered in the DRO. The Participant will receive the PLS distribution at retirement and only his or her portion will be reduced by the PLS election.

If the DRO does not address the PLS and the ex-spouse wants to receive a portion of the PLS distribution or if there are any other objections involving the PLS payout, the DRO will need to be revised. The Retirement System will contact the Participant and the ex-spouse and give them 45 days to return to Court and serve the Retirement System with either a Temporary Restraining Order or an amended DRO to provide the ex-spouse with a portion of the PLS distribution. Otherwise the Retirement System will process the PLS as described above.

New York State Teachers' Retirement System:

Maximum (All Tiers)

The largest benefit you can receive, paid to you for life. There are no beneficiary payments at your death (except as may be provided by the Paragraph 2 death benefit available to Tiers 2-6).

Alternative (All Tiers)

You can modify an existing option to meet your specific needs if it can be computed actuarially. The modification requires approval by the Retirement Board. Your ability to name more than one beneficiary and change that beneficiary after you retire depends on the option you select. e.g.: "The Husband shall duly elect the Alternative Option providing the Wife to receive the same amount of monthly benefit upon the Husband's post-retirement death, as she was receiving during the Husband's retirement for the remainder of the Wife's life and shall name the Wife as the sole beneficiary of such option."

Survivor (All Tiers)

A payment lower than the Maximum benefit, paid to you for life. You name one beneficiary who cannot be changed more than 30 days after you retire. Your age and your beneficiary's age are factors in the calculation of your benefit. Upon your death, your beneficiary receives a percentage (selected at retirement) of your benefit for life. A surviving spouse is eligible for 50% of the cost-of-living adjustment the retiree (if eligible) would have received. Your benefit will not change if you survive your beneficiary.

Pop-up Survivor (All Tiers)

A payment lower than the Maximum benefit, paid to you for life. You name one beneficiary who cannot be changed more than 30 days after you retire. Your age and your beneficiary's age are factors in the calculation of your benefit. Upon your death, your beneficiary receives a percentage (selected at retirement) of your benefit for life. A

surviving spouse is eligible for 50% of the cost-of-living adjustment the retiree (if eligible) would have received. If your beneficiary dies before you, you receive the Maximum benefit from that point on for life.

Guarantee Period (All Tiers)

A payment lower than the Maximum benefit, paid to you for life. You can name one primary and multiple contingent beneficiaries, and can change them at any time. If you die during the first 5 or 10 years of retirement, depending on which you selected, your beneficiary receives your benefit for the balance of the 5- or 10-year period. When the period expires, the beneficiary is no longer eligible to receive a benefit.

Declining Annuity Reserve Lump Sum (Tier 1 and 2 members who have contributions)

A payment lower than the Maximum benefit, paid to you for life. You can name more than one beneficiary and change your beneficiary(ies) at any time. The balance of your Annuity Reserve Fund is paid to your beneficiary(ies) if you die before you receive it yourself.

Declining Reserve Lump Sum (Tier 1 Only)

A payment lower than the Maximum benefit, paid to you for life. You can name more than one beneficiary and change your beneficiary(ies) at any time. The balance of your total reserve (the pension reserve and your annuity reserve, if any) is paid to your beneficiary(ies) if you die before you receive it yourself.

Largest Non-Declining Lump Sum (All Tiers except Tier 3 members retiring under Tier 3)

A payment lower than the Maximum benefit, paid to you for life. You can name more than one beneficiary and change your beneficiary(ies) at any time. At retirement, you determine a fixed lump sum to be paid at your death to your beneficiary(ies).

Sample Pension Stipulation Language for:
NYS & Local Employees' Retirement System
NYS & Local Police & Fire Retirement System
NYS Teachers' Retirement System

- **NOTE: PARTIES MUST BE DIVORCED FOR THE PENSION FUNDS TO IMPLEMENT AN ORDER. PROOF OF DIVORCE IS REQUIRED.**

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FYI - All state plans are structured as “Shared Interest” Orders

Obviously, any of the terms of this sample stipulation may be modified (such as eliminating or modifying the terms of the pre-retirement or post-retirement death benefits, COLA, loans, etc.)

The parties agree that the Husband has a beneficial interest in a defined benefit pension plan. A Domestic Relations Order will be prepared directing that the Wife shall be entitled to 50% of the marital interest in said plan as provided by the Court of Appeals in **Majauskas v Majauskas**, 61 N.Y.2d 481, 474 N.Y.S. 2d 699 (1984). The specific terms of the division of this asset are as follows:

This Order applies to the **New York State** _____ **Retirement System** (the “Retirement System”).

The Participant in the plan is _____.

The Alternate Payee is the spouse or former spouse, _____.

The Retirement System Administrator shall issue separate checks to the Participant and the Alternate Payee for their respective interests in the Retirement System at the time the benefits become payable.

At such time as the Participant has retired from the New York State _____ Retirement System, and is actually receiving a retirement allowance from the Retirement System; the Retirement System, is hereby directed to calculate the Alternate Payee's

distribution using the Participant's maximum monthly retirement allowance, prior to any optional modification.

The Alternate Payee shall receive as a distribution, in accordance with the formula devised in the case of *Majauskas v. Majauskas*, 61 NY 2d 481(1984), a portion of the Participant's benefit that accrued during the marital period ("Marital Interest"). The Marital Interest shall be a fraction, defined as follows: The numerator shall be the total number of months of credited service between the Participant's date of initial credited service in the Retirement System, or the date of the parties' marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, and the denominator shall be the total number of months of credited service in the Retirement System which the Participant has at the time of retirement, termination or death. The Alternate Payee is awarded 50.00% of the Marital Interest, multiplied by the Participant's maximum monthly retirement allowance prior to any optional modification.

Should the Participant retire on a disability retirement allowance from the Retirement System, the Retirement System, in accordance with the formula devised in the case of *Majauskas v. Majauskas*, 61 NY 2d 481(1984), is hereby directed to calculate a hypothetical service retirement allowance, based on the Participant's earnings and years of credited service. The Participant's retirement allowance shall be calculated in the same manner as a normal service pension would be calculated without any reduction for ordinary termination of employment. From this hypothetical service retirement benefit, the Retirement System is hereby directed to pay to the Alternate Payee that portion of the Participant's maximum monthly retirement allowance, prior to any optional modification, which is equal to 50.00% of the product obtained by multiplying the total amount of the hypothetical service retirement amount, by the Marital Interest. Payments shall be made directly to the Alternate Payee.

Should the Participant's hypothetical service retirement allowance exceed the Participant's disability benefit, then the Retirement System is directed to pay the Alternate Payee that portion of the Participant's maximum monthly disability retirement allowance, prior to any optional modification, which is equal to 50.00% of the product obtained by multiplying the total amount of the maximum monthly disability retirement allowance, by the Marital Interest.

The retirement allowance shall be deemed to include any Cost Of Living Adjustments (COLA), which are paid by the said Retirement System to the Participant.

The Participant is directed to designate the Alternate Payee as a beneficiary of the Retirement System, so that in the event the Participant dies prior to retirement, the Alternate Payee shall receive 50.00% of any available pre-retirement death benefit calculated pursuant to the Marital Interest formula.

The Participant is directed to elect at the time of retirement, assuming the Alternate Payee is then living, to designate the Alternate Payee as a beneficiary pursuant to the terms of the Special Joint Allowance Option, for the purpose of providing the Alternate Payee, upon the Participant's death, with a monthly retirement allowance payable for life based upon the distribution calculated pursuant to the Marital Interest formula.

The cost of the Participant's retirement option election shall be shared proportionately between the Participant and Alternate Payee.

In the event that the Participant elects to choose a Pop-Up option, any cost associated with the Participant's election of the pop-up feature shall be borne by the Participant.

Payments to the Alternate Payee will begin effective with the Participant's retirement date.

If the Participant is in a contributory plan, the Alternate Payee's share of the pension shall not be impacted by reductions to the Participant's pension for any outstanding loans at the time of the Participant's retirement.

If the Participant is in a contributory plan and receives a return of any contributions, the Alternate Payee is entitled to 50.00% of any returned contributions payable to the Participant based on the Marital Interest formula.

If Participant is eligible for and elects to receive a partial lump sum payment (PLS) from the Retirement System pension plans at the time of retirement, the PLS payment will be distributed to the Participant only, and the Alternate Payee's monthly distribution shall be calculated without reduction for the Participant's PLS election.

In the event the Alternate Payee dies prior to or after the benefits commence to him, the benefit that was payable to the Alternate Payee shall revert to the Participant.

If the Plan inadvertently pays to the Alternate Payee any benefit that is actually payable to the Participant, the Alternate Payee must make immediate reimbursement to the Participant. If the Plan inadvertently pays to the Participant any benefit that is actually payable to the Alternate Payee, the Participant must make immediate reimbursement to the Alternate Payee.

The Participant and Alternate Payee shall each be responsible for their own federal, state, and local income and any other taxes attributable to any and all payments made from the Retirement System which are received by the Participant and Alternate Payee respectively.

Plan Name:

Civil Service Retirement System (CSRS)

Federal Employees' Retirement System (FERS)

General Plan Information:

1. Generally, if the Participant began working for the Federal Government prior to 1984, they are a member of the Civil Services Retirement System (**CSRS**); if they joined after that date they are a member of the Federal Employees Retirement System (**FERS**).
2. These plans are entitlement plans, not retirement plans. The Federal Government does not accept QDROs or DROs. The documents for dividing benefits under these plans must state Court Order Acceptable for Processing (COAP).
3. The Federal Government does **not** pre-approve COAPs.
4. The Plans will allow for arrearages to be paid, if so instructed in a COAP.
5. The survivor annuity payable under these Plans is for **both** pre-retirement and post-retirement conditions. Note: If the Former Spouse is to be designated the beneficiary of a survivor annuity under the Survivor Benefit Plan (SBP) of the Civil Service Retirement System or the Federal Employees' Retirement System, under the plan's rules, if the Former Spouse remarries prior to reaching age 55, he/she will no longer be eligible to receive a benefit under the SBP.
6. The retirement benefits for Federal Government Employees covered under the Federal Employees' Retirement System (FERS) is comprised of the FERS Basic Benefit Plan, the Thrift Savings Plan (TSP) and Social Security.
7. For those government employees who are participants in the Civil Service Retirement System (CSRS), they do not contribute to Social Security, but rather contribute a greater percentage of income toward retirement. The problem that may arise is that Social Security benefits are not divisible, or a divisible asset, under the law. Social Security cannot be treated as marital property and nearly every state has recognized this. Therefore, when valuing CSRS retirement benefits, attorneys are advised, that if given sufficient information, an additional estimated calculation can be done to value what the Social Security benefit would have been, had the participant contributed to Social Security during his or her years of participation in the CSRS Plan. This value would then be extracted out of the total value of the CSRS benefit.

Related Plans:

Thrift Savings Plan (TSP) – a defined contribution type plan.

Separate or Shared Domestic Relations Order (DRO):

These Plans only accept a Shared Order.

Suggested Agreement Language:

The Participant/ [Choose: Husband/Wife] will be eligible for retirement benefits under the <INSERT PLAN NAME> based on employment with the United States Government. The United States Office of Personnel Management is directed to pay a share of the monthly retirement benefit as calculated below, directly to Former Spouse/[Choose: Husband/Wife].

If the [Choose: Husband/Wife] waives military retired pay to credit military service under the <INSERT PLAN NAME>, the United States Office of Personnel Management is directed to pay a share of the monthly retirement benefit as calculated below, directly to the Former Spouse/[Choose: Husband/Wife].

The following will be applicable using Majauskas/coverture where the Numerator is not specified:

The Former Spouse/[Choose: Husband/Wife] is entitled to a prorata share* of the [Choose: Husband/Wife]'s gross monthly annuity under the <INSERT PLAN NAME>. The marriage began on <INSERT DATE OF MARRIAGE> and the date that the parties' cease sharing benefits under the <INSERT PLAN NAME> shall be <INSERT MARITAL ASSET CUTOFF DATE>.

*§ 838.621 Prorata share: "Prorata share" means one-half of the fraction whose numerator is the number of months of Federal civilian and military service that the employee performed during the marriage and whose denominator is the total number of months of Federal civilian and military service performed by the employee.

If the [Choose: Husband/Wife] becomes eligible and applies for a refund of employee contributions, the Former Spouse/[Choose: Husband/Wife] is entitled to a prorata share of the refund of employee contributions under the <INSERT PLAN NAME>. The marriage began on <INSERT DATE OF MARRIAGE> and the date that the parties' cease sharing benefits under the <INSERT PLAN NAME> shall be <INSERT MARITAL ASSET CUTOFF DATE>.

The following will be applicable using Majauskas/coverture where the numerator is specified in the agreement:

The [Choose: Husband/Wife] will be eligible for retirement benefits under the <INSERT PLAN NAME> based on employment with the United States Government. The Former Spouse/[Choose: Husband/Wife] is entitled to _____ Percent (____%) of the marital portion computed as follows:

Gross Monthly Annuity x 50% x _____ (insert # of years Married).....
Total Years of CSRS/FERS Credited Service

The United States Office of Personnel Management is directed to pay the Former Spouse/[Choose: Husband/Wife]'s share as determined by the formula above, directly to the Former Spouse/[Choose: Husband/Wife].

CSRS/FERS (*continued*)

If the [Choose: Husband/Wife] becomes eligible and applies for a refund of employee contributions, the Former Spouse/[Choose: Husband/Wife] is entitled to a pro rata* share of the refund of employee contributions, computed as follows:

Gross Refund of Contributions x 50% x (insert # of years Married).....

Total Years of CSRS/FERS Credited Service

*§ 838.621 Prorata share: “Prorata share” means **one-half** of the fraction whose numerator is the number of months of Federal civilian and military service that the employee performed during the marriage and whose denominator is the total number of months of Federal civilian and military service performed by the employee.

The United States Office of Personnel Management is directed to pay the Former Spouse/[Choose: Husband/Wife]’s share as determined by the formula above, directly to THE Former Spouse/[Choose: Husband/Wife].

The following is a clause that can be included in the event the Participant Spouse retires for Disability:

Should the [Choose: Husband/Wife] become eligible to retire on a disability retirement benefit under the <INSERT PLAN NAME> based on employment with the United States Government, starting when the [Choose: Husband/Wife] reaches age 62, the Former Spouse/[Choose: Husband/Wife] is entitled to a prorata share of the [Choose: Husband/Wife]’s gross monthly annuity under the <INSERT PLAN NAME>, where monthly annuity means the amount of the [Choose: Husband/Wife]’s gross monthly annuity computed as though the [Choose: Husband/Wife] had retired on an immediate, non-disability annuity on the commencing date of the [Choose: Husband/Wife]’s annuity based on disability. In computing the amount of the immediate annuity, the United States Office of Personnel Management will deem the [Choose: Husband/Wife] to have been age 62 at the time that the [Choose: Husband/Wife] retired on disability. The marriage began on <INSERT DATE OF MARRIAGE> and the date that the parties’ cease sharing benefits under the <INSERT PLAN NAME> shall be <INSERT MARITAL ASSET CUTOFF DATE>.

The following clause addresses Cost of Living Adjustment:

When COLA’s are applied to the [Choose: Husband/Wife]’s retirement benefits, the same COLA ***shall/shall not*** apply to the Former Spouse/[Choose: Husband/Wife]’s share. The United States Office of Personnel Management is directed to pay the Former Spouse/[Choose: Husband/Wife]’s share directly to the Former Spouse/[Choose: Husband/Wife].

The following clause addresses a Survivor Annuity:

Under section 8341(h)(1) of title 5, United States Code the [Choose: Husband/Wife] is awarded a Former Spouse survivor annuity under the Survivor Benefit Plan (SBP) of the Civil Service Retirement System. The amount of the Former Spouse survivor annuity will be equal to a prorata share. The marriage began on <INSERT DATE OF MARRIAGE>.

CSRS/FERS (continued)

The following language may be used for Retired Participants:

The [Choose: Husband/Wife] has retired from and is actually receiving a Retirement Allowance from the <INSERT PLAN NAME> based on employment with the United States Government. The Former Spouse/[Choose: Husband/Wife] is entitled to a prorata share of the [Choose: Husband/Wife]'s gross monthly annuity under the <INSERT PLAN NAME>. The marriage began on <INSERT DATE OF MARRIAGE> and the date that the parties' cease sharing benefits under the <INSERT PLAN NAME> shall be <INSERT MARITAL ASSET CUTOFF DATE>.

The term "prorata share" is defined under § 838.621 as follows: "Prorata share" means **one-half** of the fraction whose numerator is the number of months of Federal civilian and military service that the employee performed during the marriage and whose denominator is the total number of months of Federal civilian and military service performed by the employee.

Plan Name:

New York City Employees' Retirement System (NYCERS)

General Plan Information:

- This is a defined benefit type plan not under the guidelines of ERISA.
- **NOTE: PARTIES MUST BE DIVORCED FOR THE PENSION FUNDS TO IMPLEMENT AN ORDER. PROOF OF DIVORCE IS REQUIRED.**
- Tier 1: members who joined NYCERS prior to July 1, 1973.
- Tier 2: members who joined NYCERS after June 30, 1973 but prior to July 27, 1976 and Investigators employed in District Attorney offices who join NYCERS on or after July 1, 1973.
- Tier 3: members of the uniformed force of the NYC Department of Correction who joined NYCERS on or after July 27, 1976.
- Tier 4: members who joined NYCERS after July 26, 1976 and before April 1, 2012, with the following exceptions: Members of the uniformed force of the NYC Department of Correction who are Tier 3 members Investigators who are employed by District Attorneys' offices who are Tier 2 members.
- Tier 6 members who joined NYCERS on or after April 1, 2012.

Separate or Shared Domestic Relations Order (DRO):

This Plan only accepts a Shared Interest Order.

Suggested Agreement Language:

Award: "The Alternate Payee's distribution shall be ____% of a fraction for which the numerator shall be the total number of months of credited service between the Participant's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, and the denominator shall be the total number of months of credited service in the Plan which the Participant has at the time retirement, death or termination."

COLA: "The Alternate Payee's award shall include any annuity as well as supplemental retirement allowance or cost of living adjustment which is paid by the said Plan to Participant."

Loans: "The Alternate Payee's share of the pension shall not be impacted by reductions to the Participant's pension for any outstanding loans at the time of the Participant's retirement."

Disability: Should the Participant retire on a disability retirement benefit, or convert to a disability benefit after retirement, the Plan is hereby directed to calculate the Alternate Payee's share, identified above, using a hypothetical service retirement benefit, based on the Participant's earnings and years of credited service, without reduction for early termination of employment.

Pre-retirement death benefit: "The Participant is directed to designate the Alternate Payee as beneficiary of Plan, so that in the event the Participant dies prior to retirement, the Alternate Payee shall receive a pro rata share of any available pre-retirement death benefit calculated pursuant to the coverture fraction **-OR-** ____% of any available pre-retirement death benefit."

Post-retirement death benefit: For Tiers I and II only: "The Participant is directed to elect at the time of retirement, assuming the Alternate Payee is then living, to receive benefits pursuant to the terms of a Special Joint Allowance Option for the purpose of providing the Alternate

Payee, upon the Participant's death, with a monthly retirement benefit payable for life based upon the distribution calculated pursuant to the coverture fraction.” **-OR-** See applicable retirement options (attached) for *Tiers III and IV*.

Cost of Post-retirement death benefit: The cost of the Participant's retirement option election shall be shared proportionately between the Participant and Alternate Payee **-OR-** shall be shared equally by the parties **-OR-** shall be borne solely by the Participant **-OR-** Alternate Payee.”

Cost of Pop-Up Option: “Any cost associated with the Participant's election of the pop-up feature shall be shared proportionately between the Participant and Alternate Payee **-OR-** shall be shared equally by the parties **-OR-** shall be borne solely by the Participant **-OR-** Alternate Payee.”

Return of Contributions: “If the Participant receives a return of any contributions, or if the Participant is eligible for and elects to receive a partial lump sum (PLS) payment, the Alternate Payee is entitled to a pro-rata share of any returned contributions payable to the Participant based on the coverture fraction.”

Post-Retirement Death Benefit Options

For Tier 4:

Option 1: 100% Joint and Survivor

Reduces your Maximum Retirement Allowance, with the provision that upon your death the same reduced retirement allowance is continued to your surviving designated beneficiary for life.

Option 2: 25%, 50%, or 75% Joint and Survivor

Provides the retiree with a reduced Maximum Retirement Allowance. Upon your death, a retirement allowance of 75% or less (in increments of not less than 25%) of the amount paid to you is continued to your surviving designated beneficiary for life. The Option 2 reduction is not as great as the Option 1 reduction, because the surviving beneficiary receives a lesser percentage of the retiree's allowance.

Option 3: 5 year certain

The retiree receives a reduced monthly lifetime benefit. If the retiree dies within five years from the date of retirement, the reduced monthly retirement benefit will continue to be paid to the surviving designated primary beneficiary for the unexpired balance of the five-year period.

Option 4: 10 year certain

The retiree receives a reduced monthly lifetime benefit. If the retiree dies within ten years from the date of retirement, the reduced monthly retirement benefit will continue to be paid to the surviving designated primary beneficiary for the unexpired balance of the ten-year period.

Option 5: 50% or 100% Joint and Survivor with Pop-Up option

This is the 100% or 50% Joint-and-Survivor Option with an added feature -- if the designated beneficiary predeceases you, your benefit will “pop up” to the Maximum Retirement Allowance.

NYCERS (continued)

For Tier 3 (Correction Officers Only):

Option 1: 100% Joint and Survivor (*see above*)

Option 2: 10% to 90% Joint and Survivor

Option 2 provides a reduced Maximum Retirement Allowance. A retirement allowance of 90% or less (in increments of not less than 10%) of the amount paid to the retiree is continued to his or her surviving designated beneficiary for life. The Option 2 reduction is not as great as the Option 1 reduction because the surviving beneficiary receives a lesser percentage of the retiree's allowance.

Option 3: 5 year certain (*see above*)

Option 4: 10 year certain (*see above*)

Option 5: 50% or 100% Joint and Survivor with Pop-Up option (*see above*)

Tiers 1 & 2:

Option 1: Return of Reserve

Guarantees that an amount at least equal to the Initial Reserve established at the time of your retirement will be paid out by NYCERS. Provides a death benefit equal to the value of the Initial Reserve less any monthly payments already received by you.

Option 2: 100% Joint and Survivor (*see above*)

Option 3: 50% Joint and Survivor (*see above*)

Provides a reduced Maximum Retirement Allowance, with the provision that upon your death one-half of the reduced retirement allowance is continued to your surviving designated beneficiary for life. The Option 3 reduction is not as great as the Option 2 reduction, because the surviving beneficiary receives only one-half of the retiree's allowance.

Option 4: Lump Sum Payment

Allows you to set aside a specific lump-sum benefit for your designated beneficiary(ies) upon your death after retirement. Your retirement allowance will be reduced from the Maximum Retirement Allowance. The lump-sum benefit is usually provided in units of \$1,000.

For each \$1,000 to be set aside, your Maximum Retirement Allowance is reduced by an actuarially determined amount depending on your age at retirement. The greater the lump sum amount set aside, the greater the reduction from your Maximum Retirement Allowance.

Option 4-2: 100% Joint and Survivor with Pop-Up and Option 4-3: 50% Joint and Survivor with Pop-Up

Option 4-2 and Option 4-3 provide a reduced Maximum Retirement Allowance, with the provision that upon your death either the same reduced retirement allowance

(Option 4-2), or one-half of the reduced retirement allowance (Option 4-3), is continued to your surviving designated beneficiary for life. The Pop-Up feature provides that if the designated beneficiary dies before the retiree, the retiree's benefit will "pop up" to the Maximum Retirement Allowance. All payments cease upon the death of the retiree, if the designated beneficiary predeceases him or her.

NYCERS (continued)

Option 5 (not allowed for Tier 1): 5 year certain (*see above*)

Option 6 (not allowed for Tier 1): 10 year certain (*see above*)

Sample Stipulation Language for:
NYC Employees' Retirement System (NYCERS)
NYC Teachers' Retirement System (NYCTRS)
Board of Education Retirement System (BERS)

- **NOTE: PARTIES MUST BE DIVORCED FOR THE PENSION FUNDS TO IMPLEMENT AN ORDER. PROOF OF DIVORCE IS REQUIRED.**

Obviously, any of the terms of this sample stipulation may be modified (such as eliminating or modifying the terms of the pre-retirement or post-retirement death benefits, COLA, loans, etc.)

A Domestic Relations Order will be prepared directing that the Wife shall receive as a distribution, a portion of the Husband's benefit that accrued during the marital period ("Marital Interest"). As provided by the Court of Appeals in **Majauskas v Majauskas**, 61 N.Y.2d 481, 474 N.Y.S. 2d 699 (1984). The Marital Interest shall be a fraction, defined as follows: The numerator shall be the total number of months of credited service between the Husband's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, and the denominator shall be the total number of months of credited service in the Plan which the Husband has at the time of retirement, termination or death. The Wife is awarded 50% of the Marital Interest, multiplied by the Husband's monthly retirement allowance.

Should the Husband retire on a disability retirement benefit, or convert to a disability benefit after retirement, the Plan is hereby directed to calculate the Wife's share, identified above, using a hypothetical service retirement benefit, based on the Husband's earnings and years of credited service, without reduction for early termination of employment.

The retirement allowance shall be deemed to include any Cost Of Living Adjustment (COLA), which is paid by the said Plan to Husband.

The Husband is directed to designate the Wife as a beneficiary of the Plan, so that in the event the Husband dies prior to retirement, the Wife shall receive 50% of any available pre-retirement death benefit calculated pursuant to the Marital Interest formula.

Note: NYCERS only allows post-retirement death benefit options in 25% increments. Corrections Officers are in 10% increments. You cannot use the Majauskas/Marital interest formula for post-retirement death benefits.

The Husband is directed to elect at the time of retirement, assuming the Wife is then living, to receive benefits pursuant to the terms of the 25% Joint & Survivor Option, for the purpose of providing the Wife, upon the Husband's death, with a monthly retirement benefit payable for life based upon the distribution calculated pursuant to the formula hereinabove set forth.

The cost of the Husband's retirement option election shall be shared proportionately between the Husband and Wife (cost of option could be borne by the Husband or Wife solely). Should the Husband choose to add the Pop Up modification to the option choice specified in this Order, the cost of the Pop Up shall be borne by the Husband.

The Plan is directed to commence payments to the Wife effective with the Husband's retirement date.

The Wife's share of the pension shall not be impacted by reductions to the Husband's pension for any outstanding loans at the time of the Husband's retirement

If the Husband receives a return of contributions in lieu of a pension benefit due to termination of employment, the Wife shall receive 50% of the amount of said returned contributions, accrued during the marital period, to wit, from the Husband's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, to the date that the parties ceased sharing marital assets, that being _____, plus interest on said contributions up to the date of distribution to the Wife.

If, as of the date of the cutoff of marital assets, that being _____, the Husband remains in employment and has excess contributions in his retirement account, the Wife shall receive 50% of a benefit equivalent to the actuarial value of the excess of said excess contributions accrued during the marital period, to wit, from the Husband's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to _____, plus interest up to the date of distribution to the Wife. The Wife's portion of the monthly retirement allowance shall include said excess.

Note: Corrections Officers are again eligible for Variable Supplement Fund benefits. This is on an ad hoc basis and may cease at any time as determined by the NYC Retirement System.

If the Husband is eligible to receive a benefit under the Variable Supplement Fund (VSF), the Wife is awarded 50% of the annual benefit, multiplied by a fraction, the numerator of which is the total years of credited service with Plan, from the Husband's membership date, or from the parties' date of marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, or the date the Husband qualifies for the VSF (20 years of credited service), whichever is earlier, and the denominator shall be 20 years. *(Since the benefit accrues only during the first twenty years of employment, the denominator is 20 years.)*

The Husband and Wife shall each be responsible for their own federal, state, and local income and any other taxes attributable to any and all payments made from the Plan which are received by the Husband and Wife respectively.

In the event the Wife dies prior to commencement of the defined benefit pension to her, or in the event the Wife predeceases the Husband after the benefits commence to the Husband, the defined benefit pension that was payable to the Wife shall revert to the Husband.

Plan Names:

New York City Police Pension Fund, Article II

New York City Fire Department Pension Fund, Article 1-B, Subchapter II

General Plan Information:

- These are defined benefit type plans not under the guidelines of ERISA.
- **NOTE: PARTIES MUST BE DIVORCED FOR THE PENSION FUNDS TO IMPLEMENT AN ORDER. PROOF OF DIVORCE IS REQUIRED.**
- These Plans only accept a **Shared Interest** Order.
- If a member retires with a 20 year or more Service retirement, in addition to his/her normal pension benefit, he/she will also receive an annual benefit from the New York City Police Department or the New York City Fire Department Variable Supplement Fund. Disability Retirees are not entitled to the Variable Supplement Fund benefit.

Related Plans:

New York City Police Pension Fund, Article II:

- New York City Police Department Variable Supplement Fund (VSF). Upon completion of the required 20 years of Allowable Service, should a member continue working under plan covered employment, he/she will also be eligible to have VSF Deferred Retirement Option Plan “DROP” monies banked for him/her. Active members have the VSF DROP money banked for them as of their 20th service anniversary date. No interest or investment earnings are calculated on banked VSF accounts. This money will be payable upon the actual service retirement of the member.
- Patrolmen's Benevolent Association (PBA) Annuity Fund
- Sergeants' Benevolent Association (SBA) Annuity Fund
- Annuity Fund of the Detectives' Endowment Association, Inc. (DEA)
- Superior Officers' Council (SOC) Annuity Fund
- Deferred Compensation Plan for Employees of the City of New York and Related Agencies and Instrumentalities (457, 401K, Special 401K Rollover) (*see attached for award rules*)

New York City Fire Department Pension Fund, Article 1-B, Subchapter II:

- New York City Fire Department Variable Supplement Fund (VSF). Upon completion of the required 20 years of Allowable Service, should a member continue working under plan covered employment, he/she will also be eligible to have VSF Deferred Retirement Option Plan “DROP” monies banked for him/her. Active members have the VSF DROP money banked for them as of their 20th service anniversary date. No interest or investment earnings are calculated on banked VSF accounts. This money will be payable upon the actual service retirement of the member.
- Compensation Accrual Fund of the Uniformed Firefighters Association
- The Annuity Fund of the Uniformed Fire Officers' Association (UFOA)
- Deferred Compensation Plan for Employees of the City of New York and Related Agencies and Instrumentalities (457, 401K, Special 401K Rollover) (*see attached for award rules*)

Separate or Shared Domestic Relations Order (DRO):

These Plans only accepts a Shared Interest Order.

Suggested Agreement Language:

Award: “The Alternate Payee's distribution shall be ____% of a fraction for which the numerator shall be the total number of months of credited service between the Participant's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, and the denominator shall be the total number of months of credited service in the Plan which the Participant has at the time retirement, death or termination.”

“In regard to the Variable Supplement Fund (VSF), the Alternate Payee shall be entitled to ____% of a fraction for which the numerator shall be the total number of months of credited service between the Participant's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, or the date the Participant qualifies for the Variable Supplement Fund (20 years of credited service), whichever is earlier, and the denominator shall be 20 years. In no event will the fraction be greater than one. The Alternate Payee shall receive the same fractional portion of any balance of the Variable Supplement Fund payments held in the Participant's Deferred Retirement Option Plan (DROP) account, which are payable upon the Participant's retirement.”

COLA: “The Alternate Payee's award shall include any annuity as well as supplemental retirement allowance or cost of living adjustment which is paid by the said Plan to Participant.”

Loans: “The Alternate Payee's share of the pension shall not be impacted by reductions to the Participant's pension for any outstanding loans at the time of the Participant's retirement.”

Disability: “Should the Participant retire on a disability retirement benefit from the Plan, the Plan is hereby directed to calculate the Alternate Payee's share, identified above, using a hypothetical service retirement benefit, based on the Participant's earnings and years of credited service, without any reduction for ordinary termination of employment.”

Pre-retirement death benefit: “The Participant is directed to designate the Alternate Payee as beneficiary of Plan, so that in the event the Participant dies prior to retirement, the Alternate Payee shall receive a pro rata share of any available pre-retirement death benefit calculated pursuant to the coverture fraction **-OR-** ____% of any available pre-retirement death benefit.”

Post-retirement death benefit: “The Participant is directed to elect at the time of retirement, assuming the Alternate Payee is then living, to receive benefits pursuant to the terms of the Option 4- Annuity Option for the purpose of providing the Alternate Payee, upon the Participant's death, with a monthly retirement benefit payable for life based upon the distribution calculated pursuant to the coverture fraction.” **-OR-** See other retirement options (attached).

Cost of Post-retirement death benefit: The cost of the Participant's retirement option election shall be shared proportionately between the Participant and Alternate Payee **-OR-** shall be shared equally by the parties **-OR-** shall be borne solely by the Participant **-OR-** Alternate Payee.”

Cost of Pop-Up Option: “Any cost associated with the Participant's election of the pop-up feature shall be shared proportionately between the Participant and Alternate Payee **-OR-** shall be shared equally by the parties **-OR-** shall be borne solely by the Participant **-OR-** Alternate Payee.”

Return of Contributions: “If the Participant receives a return of any contributions, or if the Participant is eligible for and elects to receive a partial lump sum (PLS) payment, the Alternate Payee is entitled to a pro-rata share of any returned contributions payable to the Participant based on the coverture fraction.”

Post-Retirement Death Benefit Options

New York City Police Pension Fund, Article II and New York City Fire Department Pension Fund, Article 1-B, Subchapter II

Maximum

The maximum retirement allowance, under which he or she will received the largest possible retirement income with all benefits ceasing on his or her death.

Option I (Tier 1 only)

Permits a Tier 1 Member to elect that, if he or she dies before receiving pension payments equal to the Members Retirement Allowance Reserve (pension plus annuity) the difference (reserve minus all pension payments to, received) will be payable to the Member's named beneficiary. This is sometimes referred to as the "return of reserve" option. It is generally elected only by Members who do not expect to live for a considerable period after retirement. A Tier 2 Member can elect Option 1 only with respect to the "annuity" portion of the Member's reserve which is composed only of the Member's own contributions to the pension fund. However, a Tier 2 Member may elect a 5 or 10 year "Certain" option, as explained below.

Option 2

Permits a Tier I or 2 Member to elect an actuarially reduced retirement allowance for the Member's life, with the same level of payments to the Member's beneficiary for life. This option is sometimes referred to as providing a "100% Joint and Survivor Pension." It can also be elected as a "Pop Up" option, so that, if the beneficiary should die before the Member, the Member's allowance would be automatically increased to the level of the Maximum (No Option) Retirement Allowance.

Option 3

Permits a Tier I or 2 Member to elect to receive an actuarially reduced retirement allowance for life with 50% of the retirement allowance to continue to the Member's beneficiary for life. This option is referred to as providing a "50% Joint and Survivor Pension." Option 3 is also available as a "Pop Up" option.

Option 4

4-a: Permits a Tier 1 or 2 Member to select any other type of options as long as approved by actuary. Similar to Options 2 and 3 in that a lifelong annuity is provided for a surviving beneficiary. It provides that the Member may elect to have his surviving beneficiary receive an annuity of an amount specified by the retiree (up to the full amount of Option 2). May be elected with a "pop-up".

4-b: This option provides a lump sum payment to a beneficiary in any multiple of \$1,000 (SIMILAR TO LIFE INSURANCE) to the full amount of the member's annuity savings accounts. For this option you may choose more than one beneficiary and the beneficiary may be changed at any time. This option is less desirable because unlike life insurance, the amount is subject to Federal tax (except for Accidental Disability pensions); therefore this option is usually only chosen by a member who cannot get traditional life insurance (due to health concerns).

Option 5 (Tier 2 Members Only)

A “five-year certain option” providing an actuarially reduced retirement allowance to the Member for life and providing that, should the Member die before the end of the five year period following retirement, the designated beneficiary would receive any remaining pension payments yet to be made during that five year period.

Option 6 (Tier 2 Members Only)

A “ten-year certain option” (the same as the 5-year certain,) except the guarantee is for 10 years, instead of 5 years.

Sample Stipulation Language for NYPD and NYFD

- **NOTE: PARTIES MUST BE DIVORCED FOR THE PENSION FUNDS TO IMPLEMENT AN ORDER. PROOF OF DIVORCE IS REQUIRED.**

Obviously, any of the terms of this sample stipulation may be modified (such as eliminating or modifying the terms of the pre-retirement or post-retirement death benefits, COLA, loans, etc)

A Domestic Relations Order will be prepared directing that the Wife shall receive as a distribution, a portion of the Husband's benefit that accrued during the marital period ("Marital Interest"). As provided by the Court of Appeals in **Majauskas v Majauskas**, 61 N.Y.2d 481, 474 N.Y.S. 2d 699 (1984), the Marital Interest shall be a fraction, defined as follows: The numerator shall be the total number of months of credited service between the Husband's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, and the denominator shall be the total number of months of credited service in the Plan which the Husband has at the time of retirement, termination or death. The Wife is awarded 50% of the Marital Interest, multiplied by the Husband's monthly retirement allowance.

Should the Husband retire on a disability retirement benefit, or convert to a disability benefit after retirement, the Plan is hereby directed to calculate the Wife's share, identified above, using a hypothetical service retirement benefit, based on the Husband's earnings and years of credited service, without reduction for early termination of employment.

The retirement allowance shall be deemed to include any Cost Of Living Adjustment (COLA), which is paid by the said Plan to Husband.

The Husband is directed to designate the Wife as a beneficiary of the Plan, so that in the event the Husband dies prior to retirement, the Wife shall receive 50% of any available pre-retirement death benefit calculated pursuant to the Marital Interest formula.

The Husband is directed to elect at the time of retirement, assuming the Wife is then living, to receive benefits pursuant to the terms of the Option 4 - Annuity, for the purpose of providing the Wife, upon the Husband's death, with a monthly retirement benefit payable for life based upon the distribution calculated pursuant to the formula hereinabove set forth.

The cost of the Husband's retirement option election shall be shared proportionately between the Husband and Wife [*cost of option could be borne by the Husband or Wife solely*]. Should the Husband choose to add the Pop Up modification to the option choice specified in this Order, the cost of the Pop Up shall be borne by the Husband.

The Plan is directed to commence payments to the Wife effective with the Husband's retirement date.

The Wife's share of the pension shall not be impacted by reductions to the Husband's pension for any outstanding loans at the time of the Husband's retirement.

If the Husband receives a return of contributions in lieu of a pension benefit due to termination of employment, the Wife shall receive 50% of the amount of said returned contributions, accrued during the marital period, to wit, from the Husband's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, to the date that the parties ceased sharing marital assets, that being _____, plus interest on said contributions up to the date of distribution to the Wife.

If, as of the date of the cutoff of marital assets, that being _____, the Husband remains in employment and has excess contributions in his retirement account, the Wife shall receive 50% of a benefit equivalent to the actuarial value of the excess of said excess contributions accrued during the marital period, to wit, from the Husband's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to _____, plus interest up to the date of distribution to the Wife. The Wife's portion of the monthly retirement allowance shall include said excess.

If the Husband is eligible to receive a benefit under the Variable Supplement Fund (VSF), the Wife is awarded 50% of the annual benefit, multiplied by a fraction, the numerator of which is the total years of credited service with Plan, from the Husband's membership date, or from the parties' date of marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, or the date the Husband qualifies for the VSF (20 years of credited service), whichever is earlier, and the denominator shall be 20 years. The Wife shall receive the same fractional portion of any balance of the VSF payments held in the Husband's Deferred Retirement Option Plan (DROP) account, which are payable upon the Husband's retirement.

The Husband and Wife shall each be responsible for their own federal, state, and local income and any other taxes attributable to any and all payments made from the Plan which are received by the Husband and Wife respectively.

In the event the Wife dies prior to commencement of the defined benefit pension to her, or in the event the Wife predeceases the Husband after the benefits commence to the Husband, the defined benefit pension that was payable to the Wife shall revert to the Husband.

If the Plan inadvertently pays to the Alternate Payee any benefit that is actually payable to the Participant, the Alternate Payee must make immediate reimbursement to the Participant. If the Plan inadvertently pays to the Participant any benefit that is actually payable to the Alternate Payee, the Participant must make immediate reimbursement to the Alternate Payee.

Award Rules for Related Plans:

New York City Police Pension Fund, Article II:

- **Patrolmen's Benevolent Association (PBA) Annuity Fund**
Plan will allow a percentage or dollar amount with a cutoff date no earlier than June 30, 2005. The Plan can calculate gains/losses up to the date of distribution.
- **Sergeants' Benevolent Association (SBA) Annuity Fund**
Plan will allow a percentage or dollar amount as of a cutoff date. A specific date can be used if after July 1, 2003. If prior to July 1, 2003, the Plan can determine the amount as of the quarterly plan valuation date immediately preceding _____ (cutoff date) **or** next following _____ (cutoff date). The Plan can calculate gains/losses up to the date of distribution.
- **Annuity Fund of the Detectives' Endowment Association, Inc. (DEA)**
Plan will allow a percentage or dollar amount as of a quarter ending date. The Plan will not calculate gains/losses up to the date of distribution.
- **Superior Officers' Council (SOC) Annuity Fund**
Plan will allow a percentage or dollar amount as of a quarter ending date. The Plan will not calculate gains/losses up to the date of distribution.
- **Deferred Compensation Plan / NYCE IRA for Employees of the City of New York and Related Agencies and Instrumentalities (457, 401K, Special 401K Rollover, 401(a), 401K Savings and Incentive Plan, NYCE IRA)**
Plan will allow percentage or dollar amount as of a specified date. The Plan can calculate gains/losses to the date of distribution **–OR–** The Plan also allows a percentage or dollar amount as of the date the account is established. **–OR–** Plan can calculate marital portion if the later of the date of marriage or date of hire are after July 30, 1994. Award can be adjusted for gains/losses from the date of marriage to the date of distribution.

New York City Fire Department Pension Fund, Article 1-B, Subchapter II:

- **Compensation Accrual Fund (CAF) of the Uniformed Firefighters Association**
Plan will calculate the amount that accrued between the date of marriage and the date of the division of marital assets. The Plan can calculate gains/losses up to the date of distribution. Upon promotion, the CAF does not automatically transfer funds to the UFOA. Therefore, a Fire Officer may have two separate annuity fund accounts for which separate authorizations are required to obtain account information.
- **The Annuity Fund of the Uniformed Fire Officers' Association (UFOA)**
Plan will allow a percentage or dollar amount as of a cutoff date if date is after 2001. The Plan will not calculate gains/losses up to the date of distribution.
- **Deferred Compensation Plan / NYCE IRA for Employees of the City of New York and Related Agencies and Instrumentalities (457, 401K, Special 401K Rollover, 401(a), 401K Savings and Incentive Plan, NYCE IRA)**
Same rules as above.

<p align="center">Plan Name:</p> <p>Teachers' Retirement System of the City of New York (TRS)</p>
<p align="center">General Plan Information:</p> <ul style="list-style-type: none"> • This is a defined benefit type plan not under the guidelines of ERISA. • NOTE: PARTIES MUST BE DIVORCED FOR THE PENSION FUNDS TO IMPLEMENT AN ORDER. PROOF OF DIVORCE IS REQUIRED. • TRS membership is available to certain educators who work for the New York City Department of Education (DOE), the City University of New York (CUNY), and participating New York City Charter Schools. • Currently, all TRS Members belong to one of five (5) tiers, generally depending on the date they last became TRS members; benefits vary by tier. • Tier I Members: Last joined TRS before July 1, 1973 • Tier II Members: last joined TRS after June 30, 1973 and before July 27, 1976 • Tier III Members: Last joined TRS after July 26, 1976 and before Sept. 1, 1983. • Tier IV Members: Last joined TRS after Aug. 31, 1983 and before April 1, 2012. • Tier VI Members: Last joined TRS after March 31, 2012. • All TRS members participate in the Qualified Pension Plan (QPP), a retirement plan administered under Section 401(a) of the Internal Revenue Code (IRC). The QPP provides a guaranteed, defined-benefit pension, upon meeting certain age and service requirements. • In addition, a voluntary Tax-Deferred Annuity (TDA) Program is offered to members. The TDA Program is a defined-contribution plan maintained in accordance with Section 403(b) of the IRC. • Pension (QPP) and TDA Loans are offered to members.
<p align="center">Separate or Shared Domestic Relations Order (DRO):</p> <p>This Plan only accepts a Shared Interest Order.</p>
<p align="center">Suggested Agreement Language:</p> <p>For Active Members:</p> <p>The [Choose: Husband's/Wife's] retirement benefits with the Teachers' Retirement System of the City of New York (TRS), to the extent to which it has accrued during the marriage, is marital property. The term "Retirement Allowance" means the amount of monies payable to the Participant by the Plan pursuant to the terms of the Plan, and shall be deemed to include any variable or fixed annuity as well as any post-retirement improvements, supplemental retirement allowance, Cost of Living Adjustments (COLA), early retirement subsidy, or additional service credits which is now, or may hereafter be, available or offered to the Participant. The Former Spouse's portion shall be determined prior to any reductions for any optional form of payment which may be chosen by the Participant at the time of his/her retirement, other than the reduction required to treat the Former Spouse as the surviving spouse.</p>

Teachers' Retirement System of the City of New York (TRS) (continued)

The term "Coverture Fraction" shall be defined to mean that portion of the [Choose: Husband/Wife]'s retirement benefit acquired during the parties' marriage, and shall be a fraction, the numerator of which is a total number of months of credited service the member has earned (plus any additional service credits granted to Tier 1 and Tier 2 participants), from the [Choose: Husband/Wife]'s date of initial credited service or from the date of marriage, <INSERT DATE OF MARRIAGE>, whichever is later, up to the asset cutoff date of <INSERT MARITAL ASSET CUTOFF DATE>, and the denominator of said fraction is the total number of months of credited service earned (plus any additional service credits granted to Tier 1 and Tier 2 participants) from the [Choose: Husband/Wife]'s date of initial credited service with the Teachers' Retirement System, up to the date of the [Choose: Husband/Wife]'s actual retirement, termination or death.

At such time as the [Choose: Husband/Wife] has retired from and is actually receiving a Retirement Allowance from the Teachers' Retirement System, the said Teachers' Retirement System, in accordance with the formula devised in the case of Majauskas v. Majauskas, 61 N.Y.2d 481 (1984), is hereby directed to pay to Former Spouse/[Choose: Husband/Wife] that portion of [Choose: Husband/Wife]'s monthly retirement allowance which is equal to FIFTY PERCENT (50%) of the product obtained by multiplying the total amount of the monthly Retirement Allowance due the [Choose: Husband/Wife], by the Coverture Fraction.

The TRS will not accept language that divides the Participant's benefit under any scenario other than what the Participant actually receives. So what this means is that if the Participant takes ANY action which might ultimately reduce their monthly benefit, if the Former Spouse is awarded a percentage of the benefit, it will also reduce the Former Spouse's portion. Examples of actions that may cause a reduction in the monthly benefit, include having a pension loan balance at the time of retirement, or naming a subsequent spouse, or any other person, as a beneficiary of their pension benefits. Nor will the TRS accept language which pays an alternative amount (an award of the service portion), if the Participant receives a disability benefit.

The only way to insure that the alternate payee's award is not reduced is to insert the following language in the agreement:

- a.) The Participant may **not** take pension loans or any other action which might reduce the total pension amount payable to the Former Spouse; and
- b.) The Participant must choose to receive their retirement benefit as a Single Life Annuity, unless the Participant has been directed to name the Former Spouse as a beneficiary of any post-retirement death benefits.

Should the Participant retire on a disability pension, the Former Spouse shall receive a share of the disability pension as calculated under the Coverture Fraction formula. In most cases the difference between the accrued service benefit and the disability benefit is relatively insignificant. Under current case law, the Former Spouse is entitled a percentage of the marital portion of the service. Therefore, should either party feel that

there is an inequity in the amount awarded to the Former Spouse, they shall have the right to obtain the services of an outside pension consultant to calculate the marital portion of what would have been payable as a service benefit, and submit an amended DRO to rectify the situation.

In the event the [Choose: Husband/Wife]'s employment is terminated, and he/she becomes eligible to receive a return of his/her accumulated annual contributions plus interest, the Former Spouse/[Choose: Husband/Wife] shall receive a pro-rata share of said return of accumulated annual contributions plus interest accrued on the date of termination. The Former Spouse/[Choose: Husband/Wife]'s share shall be FIFTY PERCENT (50%) of the amount determined by multiplying the total return by the Coverture Fraction.

The [Choose: Husband/Wife] is hereby directed to designate the Former Spouse/[Choose: Husband/Wife] as beneficiary of the [Choose: Husband/Wife]'s pre-retirement survivor benefit, so that in the event the [Choose: Husband/Wife] dies prior to his/her retirement, the Former Spouse/[Choose: Husband/Wife] shall receive a portion of the pre-retirement death benefit, calculated pursuant to Coverture Fraction, then multiplied by [**Choose One 50%, 100% or _____%**], and then multiplied by the pre-retirement survivor benefit. The [Choose: Husband/Wife] shall complete and submit all necessary Designation of Beneficiary forms as required by the Retirement System to ensure that this provision is complied with. Within 15 days after said Designation of Beneficiary have been filed with the Retirement System, the [Choose: Husband/Wife] shall provide copies of the Designation of Beneficiary forms (time stamped by the New York City Teachers' Retirement System) to both the Former Spouse/[Choose: Husband/Wife] and his/her attorney, via Certified Mail.

The following language is the preferred post-retirement death benefit option choice for Tier I and Tier II members:

Since the Court cannot order the Teachers' Retirement System of the City of New York to compel the [Choose: Husband/Wife] to choose a death benefit option, the [Choose: Husband/Wife] is hereby directed to designate Former Spouse/[Choose: Husband/Wife] as beneficiary of the [Choose: Husband/Wife]'s Teachers' Retirement System of the City of New York pension. At the time of his/her retirement the [Choose: Husband/Wife] is directed to choose Option IV-a, so that in event he/she dies while the pension is in pay status, the Former Spouse/[Choose: Husband/Wife] shall receive the same percentage of the retirement allowance as defined under the Coverture Fraction formula. The [Choose: Husband/Wife] shall complete and submit all necessary Designation of Beneficiary forms required by the Plan to ensure that this provision is complied with.

The following language is the preferred post-retirement death benefit option choice for Tier III members:

Since the Court cannot order the Teachers' Retirement System of the City of New York to compel the [Choose: Husband/Wife] to choose a death benefit option, the [Choose: Husband/Wife] is hereby directed to designate Former Spouse/[Choose: Husband/Wife]

as beneficiary of the [Choose: Husband/Wife]'s Teachers' Retirement System of the City of New York pension. At the time of his/her retirement the [Choose: Husband/Wife] is directed to choose Option 2, so that in event he/she dies while the pension is in pay status, the Former Spouse/[Choose: Husband/Wife] shall receive **[choose one: (10%, 20%, 30%), 40%, 50%, 60%, 70%, 80% or 90%]** of the reduced monthly allowance. The [Choose: Husband/Wife] shall complete and submit all necessary Designation of Beneficiary forms required by the Plan to ensure that this provision is complied with.

The following language is the preferred post-retirement death benefit option choice for Tier IV members:

Since the Court cannot order the Teachers' Retirement System of the City of New York to compel the [Choose: Husband/Wife] to choose a death benefit option, the [Choose: Husband/Wife] is hereby directed to designate Former Spouse/[Choose: Husband/Wife] as beneficiary of the [Choose: Husband/Wife]'s Teachers' Retirement System of the City of New York pension. At the time of his/her retirement the [Choose: Husband/Wife] is directed to choose Option 2, so that in event he/she dies while the pension is in pay status, the Former Spouse/[Choose: Husband/Wife] shall receive **[choose one: (75%, 50% or 25%)]** of the reduced monthly allowance. The [Choose: Husband/Wife] shall complete and submit all necessary Designation of Beneficiary forms required by the Plan to ensure that this provision is complied with.

Please make selection below as to who will be responsible for the cost of the post-retirement death benefit:

At such time as the [Choose: Husband/Wife] actually retires from the New York City Teachers' Retirement System, and the [Choose: Husband/Wife] was directed to provide to the Former Spouse/[Choose: Husband/Wife] survivor protection, **both the [Choose: Husband/Wife]'s and the Former Spouse/[Choose: Husband/Wife]'s share shall be reduced proportionally**, by the amount of any reduction of said maximum allowance directly attributable to the cost of any optional survivor protection so chosen by the [Choose: Husband/Wife].

OR

At such time as the [Choose: Husband/Wife] actually retires from the New York City Teachers' Retirement System, and the [Choose: Husband/Wife] was directed to provide to the Former Spouse/[Choose: Husband/Wife] survivor protection, the **[Choose: Husband/Wife]'s share shall be reduced**, by the amount of any reduction of said maximum allowance directly attributable to the cost of any optional survivor protection so chosen by the [Choose: Husband/Wife].

OR

At such time as the [Choose: Husband/Wife] actually retires from the New York City Teachers' Retirement System, and the [Choose: Husband/Wife] was directed to provide

to the Former Spouse/[Choose: Husband/Wife] survivor protection, the **Former Spouse/[Choose: Husband/Wife]'s share shall be reduced**, by the amount of any reduction of said maximum allowance directly attributable to the cost of any optional survivor protection so chosen by the [Choose: Husband/Wife].

In the event the Former Spouse/[Choose: Husband/Wife] dies prior to commencement of benefits to him/her, the [Choose: Husband/Wife] shall have the option to receive full benefits and choose any pension option available to the [Choose: Husband/Wife].

In the event the Former Spouse/[Choose: Husband/Wife] dies after the commencement of benefits to him/her, all defined benefit pension payments shall revert to the [Choose: Husband/Wife].

When the [Choose: Husband/Wife] begins to receive a retirement allowance from the Teachers' Retirement System, the Former Spouse/[Choose: Husband/Wife] is entitled to receive a monthly benefit payable until the earlier of the death of the [Choose: Husband/Wife] or the death of the Former Spouse/[Choose: Husband/Wife]. If the [Choose: Husband/Wife] predeceases the Former Spouse/[Choose: Husband/Wife], and at the time of the [Choose: Husband/Wife]'s retirement, he/she chose a death benefit option naming the Former Spouse/[Choose: Husband/Wife] as beneficiary, the benefits shall continue to the Former Spouse/[Choose: Husband/Wife] under said option.

The Former Spouse/[Choose: Husband/Wife] shall be liable for any taxes due upon his/her portion of the retirement allowance benefit.

The following paragraphs pertain to the Tax Deferred Annuity (TDA) Program:

As to the Teachers' Retirement System of the City of New York Tax Deferred Annuity Plan (TDA), the Former Spouse/[Choose: Husband/Wife] is hereby assigned [*Choose one*: ____ percent (____%); **or** _____ DOLLARS (\$____)] of the total vested balance of the [Choose: Husband/Wife]'s TDA account that accumulated during the parties' marriage and subject to equitable distribution; to wit: from the Participant's date of initial Plan participation, or the date of the parties' marriage, that being < DATE OF MARRIAGE >, whichever is later, up to the date of the division of marital assets, that being, < CUTOFF DATE > **OR** of the total vested balance of the Participant's Plan account, determined as of < CUTOFF DATE > The amount awarded to the Former Spouse/[Choose: Husband/Wife] shall be separately accounted for, and [**choose: shall/shall not**] be credited with earnings and losses as specified by the terms of the Plan, in the same manner as other accounts held in the Plan, from <CUTOFF DATE>, until the benefits are distributed to Former Spouse/[Choose: Husband/Wife]. The distribution to the Former Spouse/[Choose: Husband/Wife] shall be made as soon as administratively practicable after an Order has been accepted by the Plan. The [Choose: Husband/Wife] shall complete a TDA Withdrawal Application form and any other forms required by the Plan, prior to distribution, to effect such transfer to the Former Spouse/[Choose: Husband/Wife], prior to the time the funds are to be distributed. The amount distributed to the Former Spouse/[Choose: Husband/Wife] may be made as a "Direct Rollover" into an IRA or similar account as designated by the Former

Spouse/[Choose: Husband/Wife].

The [Choose: Husband/Wife]'s vested account balance [**choose: will/will not**] be reduced by the value of outstanding loans before the Former Spouse/[Choose: Husband/Wife]'s portion of the TDA benefit is determined.

The Former Spouse/[Choose: Husband/Wife] shall be liable for any taxes due upon his/her portion of the TDA benefit.

Sample Stipulation Language for:
NYC Employees' Retirement System (NYCERS)
NYC Teachers' Retirement System (NYCTRS)
Board of Education Retirement System (BERS)

- **NOTE: PARTIES MUST BE DIVORCED FOR THE PENSION FUNDS TO IMPLEMENT AN ORDER. PROOF OF DIVORCE IS REQUIRED.**

Obviously, any of the terms of this sample stipulation may be modified (such as eliminating or modifying the terms of the pre-retirement or post-retirement death benefits, COLA, loans, etc.)

A Domestic Relations Order will be prepared directing that the Wife shall receive as a distribution, a portion of the Husband's benefit that accrued during the marital period ("Marital Interest"). As provided by the Court of Appeals in **Majauskas v Majauskas**, 61 N.Y.2d 481, 474 N.Y.S. 2d 699 (1984). The Marital Interest shall be a fraction, defined as follows: The numerator shall be the total number of months of credited service between the Husband's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, and the denominator shall be the total number of months of credited service in the Plan which the Husband has at the time of retirement, termination or death. The Wife is awarded 50% of the Marital Interest, multiplied by the Husband's monthly retirement allowance.

Should the Husband retire on a disability retirement benefit, or convert to a disability benefit after retirement, the Plan is hereby directed to calculate the Wife's share, identified above, using a hypothetical service retirement benefit, based on the Husband's earnings and years of credited service, without reduction for early termination of employment.

The retirement allowance shall be deemed to include any Cost Of Living Adjustment (COLA), which is paid by the said Plan to Husband.

The Husband is directed to designate the Wife as a beneficiary of the Plan, so that in the event the Husband dies prior to retirement, the Wife shall receive 50% of any available pre-retirement death benefit calculated pursuant to the Marital Interest formula.

Note: NYCERS only allows post-retirement death benefit options in 25% increments. Corrections Officers are in 10% increments. You cannot use the Majauskas/Marital interest formula for post-retirement death benefits.

The Husband is directed to elect at the time of retirement, assuming the Wife is then living, to receive benefits pursuant to the terms of the 25% Joint & Survivor Option, for the purpose of providing the Wife, upon the Husband's death, with a monthly retirement benefit payable for life based upon the distribution calculated pursuant to the formula hereinabove set forth.

The cost of the Husband's retirement option election shall be shared proportionately between the Husband and Wife (cost of option could be borne by the Husband or Wife solely). Should the Husband choose to add the Pop Up modification to the option choice specified in this Order, the cost of the Pop Up shall be borne by the Husband.

The Plan is directed to commence payments to the Wife effective with the Husband's retirement date.

The Wife's share of the pension shall not be impacted by reductions to the Husband's pension for any outstanding loans at the time of the Husband's retirement

If the Husband receives a return of contributions in lieu of a pension benefit due to termination of employment, the Wife shall receive 50% of the amount of said returned contributions, accrued during the marital period, to wit, from the Husband's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, to the date that the parties ceased sharing marital assets, that being _____, plus interest on said contributions up to the date of distribution to the Wife.

If, as of the date of the cutoff of marital assets, that being _____, the Husband remains in employment and has excess contributions in his retirement account, the Wife shall receive 50% of a benefit equivalent to the actuarial value of the excess of said excess contributions accrued during the marital period, to wit, from the Husband's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to _____, plus interest up to the date of distribution to the Wife. The Wife's portion of the monthly retirement allowance shall include said excess.

Note: Corrections Officers are again eligible for Variable Supplement Fund benefits. This is on an ad hoc basis and may cease at any time as determined by the NYC Retirement System.

If the Husband is eligible to receive a benefit under the Variable Supplement Fund (VSF), the Wife is awarded 50% of the annual benefit, multiplied by a fraction, the numerator of which is the total years of credited service with Plan, from the Husband's membership date, or from the parties' date of marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, or the date the Husband qualifies for the VSF (20 years of credited service), whichever is earlier, and the denominator shall be 20 years. *(Since the benefit accrues only during the first twenty years of employment, the denominator is 20 years.)*

The Husband and Wife shall each be responsible for their own federal, state, and local income and any other taxes attributable to any and all payments made from the Plan which are received by the Husband and Wife respectively.

In the event the Wife dies prior to commencement of the defined benefit pension to her, or in the event the Wife predeceases the Husband after the benefits commence to the Husband, the defined benefit pension that was payable to the Wife shall revert to the Husband.

Plan Name:

The Long Island Rail Road Company (LIRR) Pension Plan and The Long Island Rail Road Company Plan for Additional Pensions

General Plan Information:

1. These Plans are not subject to the rules under ERISA, and as such, a DRO should not include any language, definitions, etc. that you find in an ERISA plan.
2. Generally, LIRR employees in this Plan were hired by the LIRR before January 1, 1988. Employees hired after this date are members of the MTA Defined Benefit Pension Plan.
3. The rules of these Plans are such that no more than 50% of a member's pension can be assigned to another party.
4. No death benefits (pre or post) are allowed to a former spouse. The Plans only provide death benefits to a current spouse.
5. Railroad employees are also entitled to separate retirement benefits from the Railroad Retirement Board (RRB).
6. There will be a mandatory offset/reduction to a member's LIRR pension benefit upon reaching age 65 for the Railroad Retirement Board at a rate of 25% or 50% depending on the Participant's date of hire.
7. Disability payments are not paid from the LIRR. They come from the Railroad Retirement Board. Any payments received by a member from the LIRR plans, are the result of a regular service pension.
8. Domestic Relations Orders can only be written as a **Shared Interest** order. Plan benefits are payable to the Former Spouse based on the lifetime of the Participant.
9. Commencement of the Former Spouse's Award: For active Participants, Plan benefits are payable to the Former Spouse at such time that the Participant actually retires. In the cases whereas the Participant is actually retired and is receiving pension benefits, awarded benefits to the Former Spouse are payable as soon as administratively practicable after a Court certified copy of an Order is accepted by the Plans.
10. Cost of Living Adjustments: Not applicable to the LIRR Plans and should not be included in an Order.
11. Should the Former Spouse predecease the Participant, the Plans' benefits revert to the Participant.
12. The Plan will allow arrearage language in an Order but will not do any calculations. Language must state how much in total to be paid to AP, how much per month and for how many months.

Related Plans:

- Metropolitan Transportation Authority (MTA) 457 Deferred Compensation Plan.
- Metropolitan Transportation Authority (MTA) 401(k) Plan.
- Brotherhood of Locomotive Engineers, Division 269 Pension Fund (separate defined benefit plan for eligible LIRR employees)
- Railroad Retirement Board (RRB)

(LIRR continued)

Separate or Shared Domestic Relations Order (DRO):

A Court Order must be prepared as a **Shared Interest**. The Former Spouse can receive his/her awarded portion of the pension benefit only at such time as the Participant Spouse elects to retire.

Suggested Agreement Language:

Suggested Stip Agreement language for Active Participants

If it is the parties' intent to award the Former Spouse 50% of the marital portion of the benefits earned by the Husband under The Long Island Rail Road Company (LIRR) Pension Plan and Plan for Additional Pensions, we propose the following language.

NOTE 1: *the total number of months (expressed to the nearest whole month) that the parties were married in the Plans must be determined by the parties for the numerator of the coverture fraction.*

NOTE 2: *The Coverture Fraction as stated below is consistent with the formula established in the case entitled Majauskas v. Majauskas, 61 NY 2d 48.*

The Husband's retirement benefits with The Long Island Rail Road Company Pension Plan and The Long Island Rail Road Company Plan for Additional Pensions, to the extent to which it has accrued during the marriage, is marital property. It is the parties' agreement that a Qualified Domestic Relations Order be prepared so that the Wife/Former Spouse be awarded the marital portion of the monthly retirement benefit the Husband will receive from the Long Island Rail Road.

The term "Retirement Allowance" means the gross amount of moneys payable to the Husband by the Plans pursuant to the terms of the Plans.

The Coverture Fraction shall be defined to mean a fraction which represents that portion of the Husband's retirement benefit acquired during the parties' marriage. The numerator of the Coverture Fraction is the length of the period, expressed to the nearest whole month, commencing on the first date the Husband was both accruing benefits under the Plans and was married to the Wife/Former Spouse, and ending on the cutoff date for the acquisition of marital property. Therefore, the numerator of the Coverture Fraction is _____(_____) months. The denominator of the Coverture Fraction shall be the length, expressed to the nearest whole month, of the period commencing on the date the Participant began to accrue benefits under the Plans and ending on the date the Participant ceases to accrue benefits under the Plans. In calculating the numerator and denominator of the Coverture Fraction, any period during which the Participant did not accrue benefits under the Plans shall be disregarded.

At such time that the Husband actually retires, the Plans are hereby directed to pay to the Former Spouse, that portion of the Husband's monthly Retirement Allowance which is equal to fifty percent (50%) of the product obtained by multiplying the total amount of the monthly Retirement Allowance due the Husband, by the Coverture Fraction. The Wife/Former Spouse shall be liable for any taxes due upon her portion of the retirement benefit.

(LIRR continued)

The Plan benefits are payable to the Wife/Former Spouse for the lifetime of the Husband. In the event the Wife/Former Spouse dies, all rights to the Plan benefits shall revert to the Husband. No death benefits are allowed to a Former Spouse under the LIRR Pension plans.

Suggested Stip Agreement language for Retired Participants via a Coverture Fraction

If it is the parties' intent to award the Former Spouse fifty percent (50%) of the marital portion of the benefits earned by the Husband under The Long Island Rail Road Company (LIRR) Pension Plan and Plan for Additional Pensions, we propose the following language:

NOTE 1: *the total number of months (expressed to the nearest whole month) that the parties were married in the Plans must be determined by the parties for both the numerator and denominator of the coverture fraction.*

NOTE 2: *The Coverture Fraction as stated below is consistent with the formula established in the case entitled *Majauskas v. Majauskas*, 61 NY 2d 48.*

The Husband's retirement benefits with The Long Island Rail Road Company Pension Plan and The Long Island Rail Road Company Plan for Additional Pensions, to the extent to which it has accrued during the marriage, is marital property. It is the parties' agreement that a Qualified Domestic Relations Order be prepared so that the Wife/Former Spouse be awarded the marital portion of the monthly retirement benefit the Husband currently receives from the Long Island Rail Road.

The term "Retirement Allowance" means the gross amount of moneys payable to the Husband by the Plans pursuant to the terms of the Plans.

The Coverture Fraction shall be defined to mean a fraction which represents that portion of the Husband's retirement benefit acquired during the parties' marriage. The numerator of the Coverture Fraction is the length of the period, expressed to the nearest whole month, commencing on the first date the Husband was both accruing benefits under the Plans and was married to the Wife/Former Spouse, and ending on the earlier date of either the Husband's retirement, that being _____, or ending on the cutoff date for the acquisition of marital property, that being _____. Therefore, the numerator of the Coverture Fraction is _____ (_____) months. The denominator of the Coverture Fraction shall be the length, expressed to the nearest whole month, of the period commencing on the date the Participant began to accrue benefits under the Plans and ending on the date the Participant ceases to accrue benefits under the Plans. In calculating the numerator and denominator of the Coverture Fraction, any period during which the Participant did not accrue benefits under the Plans shall be disregarded.

Since the Husband has retired from and is actually receiving a Retirement Allowance from the Long Island Rail Road Company Pension Plan and The Long Island Rail Road Company Plan for Additional Pensions, the Long Island Rail Road Company Pension

Plan and The Long Island Rail Road Company Plan for Additional Pensions is hereby directed to pay to the Wife/Former Spouse, that portion of the Husband's monthly Retirement Allowance which is equal to _____ PERCENT (___%) of the product obtained by multiplying the total amount of the monthly Retirement Allowance due the Husband as defined in the Plans, by the Coverture Fraction. The Wife/Former Spouse shall be liable for any taxes due upon her portion of the retirement benefit.

The benefits due to the Wife/Former Spouse shall be payable to her as soon as administratively practicable after a Court certified copy of an Order is accepted by the Plans.

The Plan benefits are payable to the Wife/Former Spouse for the lifetime of the Husband. In the event the Wife/Former Spouse dies, all rights to the Plan benefits shall revert to the Husband. No death benefits are allowed to a Former Spouse under the LIRR Pension plans.

Suggested Stip Agreement language for Retired Participants via a Percentage

The Husband's retirement benefits with The Long Island Rail Road Company Pension Plan and The Long Island Rail Road Company Plan for Additional Pensions, to the extent to which it has accrued during the marriage, is marital property. It is the parties' agreement that a Qualified Domestic Relations Order be prepared so that the Wife/Former Spouse be awarded the marital portion of the monthly retirement benefit the Husband currently receives from the Long Island Rail Road.

The term "Retirement Allowance" means the gross amount of moneys payable to the Husband by the Plans pursuant to the terms of the Plans.

Since the Husband has retired from and is actually receiving a Retirement Allowance from the Long Island Rail Road Company Pension Plan and The Long Island Rail Road Company Plan for Additional Pensions, the Long Island Rail Road Company Pension Plan and The Long Island Rail Road Company Plan for Additional Pensions is hereby directed to pay to the Wife/Former Spouse, that portion of the Husband's monthly Retirement Allowance which is equal to _____ PERCENT (___%) of the total amount of the monthly Retirement Allowance the Husband is currently receiving. The Wife/Former Spouse shall be liable for any taxes due upon her portion of the retirement benefit.

The benefits due to the Wife/Former Spouse shall be payable to her as soon as administratively practicable after a Court certified copy of an Order is accepted by the Plans.

The Plan benefits are payable to the Wife/Former Spouse for the lifetime of the Husband. In the event the Wife/Former Spouse dies, all rights to the Plan benefits shall revert to the Husband. No death benefits are allowed to a Former Spouse under the LIRR Pension plans.

Plan Name:

The Railroad Retirement Board (RRB)

General Plan Information:

1. The Railroad Retirement Act (RRA) replaces the Social Security Act for rail industry employers and employees and provides monthly annuities for employees based on age and service or on disability. The RRA is administered by the Railroad Retirement Board (RRB), an independent agency in the Executive branch of the Federal government.
2. This Plan is not subject to the rules under ERISA, and as such, a DRO should not include any language, definitions, etc. that you find in an ERISA plan. The RRB will accept a Domestic Relations Order (DRO) only if it provides for an annuity partition that is valid under the RRB's regulations.
3. Annuities under the RRA may be comprised of several components, the most common being Tier I and Tier II.
 - a. The Tier I benefit is the equivalent of Social Security and is based on railroad retirement credits and any social security credits an employee has acquired. The amount of the first tier is calculated using social security formulas, but with railroad retirement age and service requirements. **A Court Order cannot be written for the division of the Tier I benefit to a former spouse.**
 - b. The Tier II benefit is based on railroad earnings alone. The RRB will accept a Court Order for partition of any divisible portion of the Tier II benefit, also referred to as the non-Tier I benefit. Domestic Relations Orders can only be written as a **Shared Interest Order**.
 - c. There are other divisible annuity components and it is best to refer to these benefits, as well as the Tier II benefit as "non-Tier I benefits" or "divisible benefits" of the employee in stipulations/agreements. All divisible benefits are subject to division by court orders.
4. Non-Tier I benefits can be awarded to the Former Spouse one of three ways:
 - a. Formula Award;
 - b. Percentage Award;
 - c. Fixed Dollar Award
5. If the Former Spouse meets all eligibility requirements for Tier I benefits, the payment of a Tier I annuity to a divorced spouse **does not reduce** the amount of the employee's annuity.
6. The partition award of the Tier II benefit to a divorced spouse **does reduce** the amount of the employee's Tier II annuity.
7. Taxation:
 - a. The Tier I portion of a railroad retirement annuity that is actually the equivalent to a social security benefit is treated as a social security benefit for Federal income tax purposes, and depending on the amount of other income received in a taxable year, a portion of these benefit payments may be subject to Federal income tax.
 - b. The Tier II benefit is considered taxable income regardless of the amount of any other income you may have and are subject to Federal income tax withholding.

(RRB continued)

- c. Railroad retirement annuities are not taxable by states in accordance with section 14 of the Railroad Retirement Act (45 U.S.C. § 231m). The RRB will not withhold state income taxes from railroad retirement payments.
- 8. Commencement of the Former Spouse's Award: Benefits are payable to the Former Spouse at such time that the Employee Spouse actually commences receiving his/her benefits. In the cases whereas the Employee Spouse is actually retired and is receiving RRB benefits, awarded benefits to the Former Spouse are payable to him/her as soon as administratively practicable after a Court certified Order is accepted by the RRB.
- 9. Death Procedures for the Tier 1 Component of the RRB: Under the **Tier I component** of the RRB, the Wife/Former Spouse may be eligible for surviving death benefits under the same benefit rules as applicable under Social Security.
- 10. Death Procedures for the Non-Tier I Divisible Benefit Awards:
 - a. If the Former Spouse predeceases the Employee Spouse, payment of the amount that the Former Spouse was receiving, or could receive under a Court Order, reverts to the Employee Spouse and does not become the property of the estate of the Former Spouse.
 - b. Previously, payments under the **Tier II component** of the RRB terminated upon the death of either party, whichever occurred first. However, recent amendments to the Railroad Retirement Act now allow for the continued payments of the Tier II awarded portion to the former spouse after the employee's death, unless the Court Order requires termination of the former spouse's awarded benefit upon the death of the employee spouse. The continued payment will be in the approximate amount of the employee annuity net Tier II benefit component that was payable to a former spouse as of the month prior to the month of the employees' death. Furthermore, the Tier II based component payable after the death of an entitled employee is no longer subject to any Cost-of-Living-Adjustment.
 - c. **Note:** A RRB representative advised that the continued payments to the former spouse will be automatic and they do not want to see any wording referencing it in an Order. *However*, if it is the parties' intent that the former spouse **not** be awarded post survivor benefits, the Court Order must specifically contain language that would require the termination of payment to a former spouse upon the employee spouse's death. Therefore, in regard to the post retirement payments under the Tier II component, the parties' agreement must contain language clearly stating the parties' intent of what will happen upon the death of the Employee Spouse.

(RRB continued)

11. Cost-Of-Living Adjustment (COLA): Cost-of-living increases are calculated in both the Tier I and Tier II benefits and are included in a railroad retirement annuity. COLA can also be applied to a Former Spouse's awarded portion of divisible benefits, and it is best to include language in the Order to ensure that the Former Spouse receives annual increases, if any, in the awarded share. Furthermore, the Tier II based component payable after the death of an Employee Spouse is no longer subject to any Cost-of-Living-Adjustment (COLA).
12. Disability Annuity: Unless an Order expressly exempts a disability annuity from being awarded to the Former Spouse, the RRB will apply an award to either a retirement or disability annuity under the RRB.

Related Plans:

If employer is the Long Island Rail Road:

- Metropolitan Transportation Authority (MTA) 457 Deferred Compensation Plan.
- Metropolitan Transportation Authority (MTA) 401(k) Plan.
- Brotherhood of Locomotive Engineers, Division 269 Pension Fund (separate defined benefit plan for eligible LIRR employees)

Separate or Shared Domestic Relations Order (DRO):

A Court Order must be prepared as a **Shared Interest**. The Former Spouse can receive his/her awarded portion of the pension benefit only at such time as the Participant Spouse elects to retire.

Suggested Agreement Language:

Choose one of the following selections for Award Language:

Formula Award

The Former Spouse is awarded, and the Railroad Retirement Board is directed to pay, an interest in the portion of the Employee Spouse's divisible benefits under the Railroad Retirement Act (45 U.S.C. § 231, et seq.) which may be divided as provided by section 14 of that Act (45 U.S.C. § 231m). The Former Spouse's share shall be computed by multiplying the divisible portion of the Employee Spouse's monthly benefit by a Coverture Fraction, the numerator of which is the number of years the Employee Spouse worked for a railroad employer during the period of the marriage that being _____ (Date of Marriage) through _____ (Marital Asset Cutoff Date), and the denominator of which shall be the Employee Spouse's total number of years employed by a railroad employer at retirement, and then dividing the product by two (***if parties agree upon 50%***).

If Cost-of-Living Adjustments (COLA) are applied to the Employee Spouse's share of the benefit(s), the same proportionate share of such increase shall apply to the share of the Employee Spouse's divisible benefits awarded to the Former Spouse.

Percentage Award

Choice A. - *If a date of division is not specified in the Order, as in the following award paragraph, the percentage awarded to the Former Spouse will be assumed to be based upon all railroad service throughout the Employee Spouse's career, regardless of the period of the marriage and applied against the final retirement benefit when ultimately paid to the Employee Spouse. If this is the parties' intent, the following wording is suggested:*

The Former Spouse is awarded, and the Railroad Retirement Board is directed to pay, an interest in the Employee Spouse's benefits under the Railroad Retirement Act (45 U.S.C. § 231, et seq.) which may be divided as provided by section 14 of that Act (45 U.S.C. § 231m). The Former Spouse's share shall be computed as an amount equal to <INSERT PERCENTAGE>, ____% of the Employee Spouse's monthly divisible benefits.

If Cost-of-Living Adjustments (COLA) are applied to the Employee Spouse's share of the benefit(s), the same proportionate share of such increase shall apply to the share of the Employee Spouse's divisible benefits awarded to the Former Spouse.

Choice B. - *If a date of division is specified in the Order, as in the following award paragraph, the percentage awarded to the Former Spouse will be based on the Employee Spouse's railroad service through the specified date, regardless of the period of the marriage AND the Former Spouse's award will be converted to a fixed dollar award. It is important to note that Cost of Living Adjustments (COLA) do not accrue to the spouse or former spouse where the award is a fixed dollar amount. If this is the parties' intent, the following wording is suggested:*

The Former Spouse is awarded, and the Railroad Retirement Board is directed to pay, an interest in the Employee Spouse's benefits under the Railroad Retirement Act (45 U.S.C. § 231, et seq.) which may be divided as provided by section 14 of that Act (45 U.S.C. § 231m). The Former Spouse's share shall be computed as an amount equal to <INSERT PERCENTAGE>, ____% of the Employee Spouse's monthly divisible benefits as of <INSERT DATE>.

(RRB continued)

OR

Fixed Dollar Award - *It is important to note that Cost of Living Adjustments (COLA) do not accrue to the spouse or former spouse where the award is a fixed dollar amount. If this is the parties' intent, the following wording is suggested:*

The Former Spouse is awarded, and the Railroad Retirement Board is directed to pay, an interest in the Employee Spouse's benefits under the Railroad Retirement Act (45 U.S.C. § 231, et seq.) which may be divided as provided by section 14 of that Act (45 U.S.C. § 231m). The Former Spouse's share shall be computed as an amount equal to <INSERT DOLLAR AMOUNT>, \$_____ of the Employee Spouse's monthly divisible benefits.

Taxation

The Former Spouse and the Employee Spouse shall be responsible for all state, federal and local income taxes payable with respect to the amounts distributed to them.

OPTIONAL PARAGAPH – Remarriage of the Former Spouse

Ordinarily, the marital status of either party does not affect the payment of an awarded portion of the divisible benefits to a Former Spouse. However, a Court Order may contain language that would require the termination of payment to a Former Spouse upon his/her remarriage. If this is the parties' intent, such wording should be specifically stated in the parties' stipulation/agreement.

The RRB and Disability Benefits:

Under the terms of the Plan, the disability benefit is calculated the same amount as the service benefit. The only difference is that it is payable earlier. Disability benefits, under the Railroad Retirement Act, convert to a retirement annuity upon the railroad employee attaining the appropriate retirement age. Please choose from one of the below paragraphs, the one that best suits your agreement:

The Former Spouse shall be entitled to 50% of the marital portion of the benefit payable under the Tier II of the U.S. Railroad Retirement Act. If this benefit is payable to the Employee Spouse earlier than his/her normal retirement eligibility, due to his/her qualification under the disability provisions of the Railroad Retirement Act, the Former Spouse shall share in this benefit immediately. Since Tier I of this benefit is similar to a Social Security benefit, the Former Spouse's eligibility for this benefit shall be determined by the Railroad Retirement Board.

OR

The Former Spouse shall be entitled to 50% of the marital portion of the benefit payable under the Tier II of the U.S. Railroad Retirement Act. If this benefit is payable to the Employee Spouse earlier than his/her normal retirement eligibility, due to his/her

qualification under the disability provisions of the Railroad Retirement Act, the Former Spouse **shall not** share in this benefit and shall not commence until the date the Employee Spouse would have been eligible for this benefit as a service benefit. Since Tier I of this benefit is similar to a Social Security benefit, the Former Spouse's eligibility for this benefit shall be determined by the Railroad Retirement Board.

Death Procedures:

If the Former Spouse predeceases the Employee Spouse, payment of the amount that the Former Spouse was receiving, or could receive under a Court Order, reverts to the Employee Spouse and does not become the property of the estate of the Former Spouse.

Post Survivor Benefits for the Tier II Component – Select one of the below paragraphs:

In the event of the death of the Employee Spouse *after* the commencement of the awarded portion of the Employee Spouse's Tier II benefit to the Former Spouse, it is the parties' intent that payments of the Tier II awarded portion to the Former Spouse shall continue after the Employee Spouse's death. The continued payment will be in the approximate amount of the employee annuity net Tier II benefit component that was payable to a Former Spouse as of the month prior to the month of the Employee Spouse's death.

OR

In the event of the death of the Employee Spouse *after* the commencement of the awarded portion of the Employee Spouse's Tier II benefit to the Former Spouse, it is the parties' intent that payments of the Tier II awarded portion to the Former Spouse shall terminate after the Employee Spouse's death.

Plan Name:
The MTA Defined Benefit Pension Plan
General Plan Information:
<ol style="list-style-type: none"> 1. Participants in this Plan are generally those employees of the Long Island Railroad who were hired on or after January 1, 1988 and who may have been participants in the former Long Island Railroad Company Money Purchase Pension. 2. Employees of the Metro-North Commuter Railroad who were formerly participants in the Metro-North Commuter Railroad Company Defined Contribution Plan for Agreement Employees. 3. Railroad employees in this plan may also be entitled to benefits from the Railroad Retirement Board (RRB) 4. For Domestic Relations Orders, the Order must state in the <u>numerator of the coverture fraction</u>, the number of months of plan credited service earned during the marital period. Accordingly, the parties' agreement/stipulation should contain that agreed upon figure.
Related Plans:
<ul style="list-style-type: none"> ■ The Metropolitan Transportation Authority (MTA) Deferred Compensation Plan . ■ The Metropolitan Transportation Authority (MTA) 401(k) Plan. ■ The Railroad Retirement Board (RRB) – this is a separate benefit plan that certain railroad employees would be entitled to benefits from. A separate Order is required for this Plan.
Separate or Shared Domestic Relations Order (DRO):
An Order may be prepared only as a Shared Interest.
Suggested Agreement Language:

The [Choose: Husband/Wife] has acknowledged that he/she is a participant in the MTA Defined Benefit Pension Plan (“the Plan”). For the purposes of the division of marital property, the Former Spouse/[Choose: Husband/Wife] shall receive an irrevocable interest in the [Choose: Husband/Wife]’s benefits under this Plan as follows:

The Plan shall pay directly to the Former Spouse/[Choose: Husband/Wife] a monthly annuity benefit determined as set forth below. The benefit under the Plan shall commence when the [Choose: Husband/Wife] begins to receive his/her retirement benefits under the Plan. The benefit payable to the Former Spouse/[Choose: Husband/Wife] shall be payable until the earlier of (a) the cessation of payments to the [Choose: Husband/Wife] under the Plan or b) the death of the Former Spouse/[Choose: Husband/Wife].

The [Choose: Husband/Wife]’s retirement benefit as determined by the Plan shall be multiplied by a fraction (the” Coverture Fraction”), determined as follows:

The numerator of the Coverture Fraction shall be the length, expressed to the nearest whole month, of the period (1) commencing on the first date the [Choose: Husband/Wife] was both accruing benefits under the Plan and was married to the Former Spouse/[Choose: Husband/Wife] and (2) ending on the cut-off date for the acquisition of the marital

property in this action which is <INSERT MARITAL ASSET CUTOFF DATE> (the “Cut-off Date”). Since the parties were married on <INSERT DATE OF MARRIAGE> and the [Choose: Husband/Wife] began accruing benefits under the Plan on <INSERT DATE OF HIRE>, the numerator of the Coverture Fraction is: _____ **months**. The denominator of the Coverture Fraction shall be the length expressed to the nearest whole month, of the period commencing on the date the [Choose: Husband/Wife] began to accrue benefits under the Plan and ending on the retirement date. In calculating the numerator and the denominator of the Coverture Fraction, any period during which the Former Spouse/[Choose: Husband/Wife] did not accrue benefits under the Plan shall be disregarded.

The Former Spouse/[Choose: Husband/Wife]’s benefit shall be equal to the product of the Coverture Fraction and the [Choose: Husband/Wife]’s retirement benefit under the Plan as and when such benefit would be paid to the [Choose: Husband/Wife], multiplied by FIFTY PERCENT (50%).

The [Choose: Husband/Wife] is hereby directed to designate the Former Spouse/[Choose: Husband/Wife] as beneficiary of the [Choose: Husband/Wife]'s pre-retirement survivor benefit, so that in the event the [Choose: Husband/Wife] dies prior to his/her retirement, the Former Spouse/[Choose: Husband/Wife] shall receive a portion of the pre-retirement death benefit, calculated pursuant to the Coverture Fraction, multiplied by FIFTY PERCENT (50%), and then multiplied by the pre-retirement survivor benefit. Within 15 days after an Order is signed by the Court, the [Choose: Husband/Wife] shall complete and submit all necessary Designation of Beneficiary forms as required by the Plan to ensure that this provision is complied with. Within 15 days after said Designation of Beneficiary have been filed with the Plan, the [Choose: Husband/Wife] shall provide copies of the Designation of Beneficiary forms to both the Former Spouse/[Choose: Husband/Wife] and his/her attorney, via Certified Mail.

At the time of retirement, the [Choose: Husband/Wife] is hereby directed to designate the Former Spouse/[Choose: Husband/Wife] as beneficiary of the MTA Defined Benefit Pension Plan, so that in the event the [Choose: Husband/Wife] dies while the pension is in payout status, the Former Spouse/[Choose: Husband/Wife] shall receive a monthly survivor benefit payable for his/her lifetime, under the following post-retirement option <SELECT ONE OF THE FOLLOWING OPTIONS UNDER THE PLAN>

- 100% Joint and Survivor Annuity
- 75% Joint and Survivor Annuity
- 50% Joint and Survivor Annuity
- 25% Joint and Survivor Annuity
- Five Year Certain Option
- Ten Year Certain Option

Plan Name:**Pension Trust Fund of the Pension, Hospitalization and Benefit Plan of the Electrical Industry**

(Note: This defined benefit plan is for members of Local Union #3 of the Joint Industry Board (JIB) of the Electrical Industry)

General Plan Information:

1. This is an ERISA defined benefit type plan.
2. The Plan is funded exclusively by Employer contributions and Participants are not required or permitted to contribute to the Plan.
3. Participants accrue a definite amount per month for each Pension Credit earned.
4. A Domestic Relations Order (DRO) is required for the division of the pension benefit.

Related Plans:

The following defined contribution plans are sponsored by Local Union #3 of the JIB:

1. Annuity Plan of the Electrical Industry
2. Additional Security Benefits Plan (ASBF) of the Electrical Industry. (Note: this plan was terminated in 2005 and through allowable distributions, the funds in member accounts may have been depleted).
3. Deferred Salary Plan (DSP) of the Electrical Industry 401(k) Plan
4. Health Reimbursement Account (HRA)

The following are separate defined benefit type plans that members of Local Union #3 of the JIB may participate in, and be entitled to benefits from:

1. International Brotherhood of Electrical Workers' Pension Benefit Fund (IBEW PBF)
2. National Electrical Benefit Fund (NEBF)

Separate or Shared Domestic Relations Order (DRO):

A DRO can be written as either a Shared Interest or a Separate Interest for the Pension Trust Fund of the Pension, Hospitalization and Benefit Plan of the Electrical Industry

- Shared Interest: the Former Spouse starts to receive the assigned benefit at the same time that the Participant starts to receive benefit, with or without pre and post death benefits.
- Separate Interest: The Former Spouse can elect to start to receive benefits at the Participant's earliest retirement age permitted by the plan, and the awarded benefit is based on the Former Spouse's lifetime.

A separate DRO is required for the division of the defined contribution plans sponsored by Local Union #3 of the JIB.

A separate DRO is required for the International Brotherhood of Electrical Workers' Pension Benefit Fund (IBEW PBF) and for the National Electrical Benefit Fund (NEBF)

Suggested Agreement Language:

The Husband has acknowledged that he has interests in various retirement benefits due to his membership in Local Union #3 of the Joint Industry Board of the Electrical Industry. The specific benefits available to members of Local 3 are the defined benefit plan known as the Pension Trust Fund of the Pension, Hospitalization and Benefit Plan of the Electrical Industry and the defined contribution plans which are a) the Annuity Plan of the Electrical Industry; b) the Additional Security Benefits Fund (ASBF) of the Electrical Industry; c) the Deferred Salary Plan (DSP) of the Electrical Industry 401(k) Plan and d) the Health Reimbursement Account (HRA) Additionally, the Husband acknowledges that he is a member of the International Brotherhood of Electrical Workers Pension Benefit Fund (IBEW PBF) and the National Electrical Benefit Fund (NEBF). For the purposes of the division of marital property, the Wife shall receive an irrevocable interest in the Husband's retirement benefits under the Plan(s) as follows:

The Wife is hereby awarded a portion of the Husband's retirement benefits derived from his membership in the **Pension Trust Fund of the Pension, Hospitalization and Benefit Plan of the Electrical Industry** as follows:

Choose one of the following that reflects the parties' intent:

Version 1 – Coverture Fraction (Majauskas Formula)

The term "Coverture Fraction" represents that portion of the Husband's retirement benefit acquired during the parties' marriage, and shall be defined to mean a fraction. The numerator of said fraction is the total credited service or pension credits earned by the Husband under the Pension Trust Fund, from the Husband's date of initial plan participation in the Pension Trust Fund or from the parties' date of marriage, that being <INSERT DATE OF MARRIAGE>, whichever is later, up to the date of the division of marital assets, that being, <INSERT MARITAL ASSET CUTOFF DATE>, and the denominator of which is the total credited service or pension credits earned by the Husband, from the Husband's date of initial participation in the Pension Trust Fund, up to the date of the Husband's retirement, termination or death, or up to the date that the Wife elects to begin collection of benefits if the Husband has not yet retired, terminated employment or died. The Wife may not elect to receive benefits earlier than the date the Husband attains Earliest Retirement Age.

At such time after the Earliest Retirement Age of the Husband that the Husband has retired or if the Husband has not yet retired, that the Wife elects to commence payment of her portion of the Retirement Allowance, the Pension Trust Fund, in accordance with the formula devised in the case of Majauskas v. Majauskas, 61 N.Y.2d 481 (1984), is hereby directed to pay to the Wife that portion of the Husband's monthly Retirement Allowance which is equal to fifty percent (50%) of the product obtained by multiplying the total amount of the monthly Retirement Allowance due the Husband as defined in the Pension Trust Fund, at the time the Wife elects to commence payment, by the Coverture Fraction. If the Plan pays a cost-of-living increase or any other post-retirement benefit increase to the Husband, the amount of any benefit payment the Wife is receiving shall be increased in proportion to the Wife's share of the Husband's benefit.

(Local Union #3 continued)

Pension Trust Fund of the Pension, Hospitalization and Benefit Plan of the Electrical Industry *(continued)*

The Wife shall be treated as a surviving spouse of the Husband and the Pension Trust Fund is hereby directed to designate the Wife as the surviving spouse of the Pension Trust Fund, so that in the event the Husband dies prior to his retirement or prior to the time the Wife begins to receive her benefits under the Pension Trust Fund, the Wife is awarded a pro rata share of the pre-retirement death benefit provided under the Pension Trust Fund. The Wife shall be awarded fifty percent (50%) of the amount determined by multiplying the pre-retirement death benefit by the Coverture Fraction.

The Wife may elect to receive her benefits under any one of the allowable benefit distribution options permitted under the terms and provisions of the Pension Trust Fund (other than in the form of a joint and survivor annuity with respect to the Wife and her subsequent spouse). Said benefits shall be payable to the Wife for her lifetime.

If, prior to the time that the Wife has commenced receiving benefits, the Husband elects to receive an early retirement benefit and receives an early retirement subsidy, the amount payable to the Wife shall be calculated so that the Wife shares in said subsidy.

In the event the Wife dies prior to commencement of the Pension Trust Fund benefits to her, all rights to the Pension Trust Fund benefits shall revert to the Husband.

The Husband and Wife shall each be responsible for their own federal, state and local income and any other taxes attributable to any and all payments made from the Pension Trust Fund which are received by the Husband and Wife respectively.

Version 2 – Separate Interest Calculated Between 2 Dates

At such time after the Earliest Retirement Age of the Husband that the Husband has retired or if the Husband has not yet retired, that the Wife elects to commence payment of her portion of the Retirement Allowance, the Pension Trust Fund, is hereby directed to pay to the Wife that portion of the Husband's monthly Retirement Allowance which is equal to fifty percent (50%) of what accrued between the Husband's date of initial plan participation or the date of the parties' marriage, that being <INSERT DATE OF MARRIAGE>, whichever is later, and <INSERT MARITAL ASSET CUTOFF DATE>, with the calculation based on the unit value as of <INSERT MARITAL ASSET CUTOFF DATE>.

The Wife shall be treated as a surviving spouse of the Husband and the Pension Trust Fund is hereby directed to designate the Wife as the surviving spouse of the Pension Trust Fund, so that in the event the Husband dies prior to his retirement or prior to the time the Wife begins to receive her benefits under the Pension Trust Fund, the Wife is awarded the same amount as calculated above, for the pre-retirement death benefit provided under the Pension Trust Fund. This pre-retirement benefit shall be payable in lieu of the previously indicated benefit indicated hereinabove.

(Local Union #3 continued)

The Pension Trust Fund benefits payable to the Wife shall be payable in any form in which such benefits may be paid under the Pension Trust Fund to the Husband (other than in the form of a joint and survivor annuity with respect to the Wife and her subsequent spouse. Said benefits shall be payable to the Wife for her lifetime.

If prior to the time that the Wife has commenced receiving benefits, the Husband elects to receive an early retirement benefit and receives an early retirement subsidy, the amount payable to the Wife shall be calculated so that the Wife shares in said benefit.

In the event the Wife dies prior to commencement of the Pension Trust Fund benefits to her, all rights to the Pension Trust Fund benefits shall revert to the Husband.

The Husband and Wife shall each be responsible for their own federal, state and local income and any other taxes attributable to any and all payments made from the Pension Trust Fund which are received by the Husband and Wife respectively.

If the Husband is in retired status, choose one of the following that reflects the parties' intent:

Version 1 – Coverture Fraction (Majauskas Formula)

The term "Coverture Fraction" represents that portion of the Husband's Retirement Allowance acquired during the parties' marriage, and shall be defined to mean a fraction, the numerator of said fraction is the total credited service or pension credits earned by the Husband under the Pension Trust Fund, from the Husband's date of initial plan participation in the Pension Trust Fund or from the parties' date of marriage, that being <INSERT DATE OF MARRIAGE>, whichever is later, up to the date of the division of marital assets, that being, <INSERT MARITAL ASSET CUTOFF DATE>, and the denominator of which is the total credited service or pension credits earned by the Husband, from the Husband's date of initial participation in the Pension Trust Fund, up to the date of the Husband's retirement.

Since the Husband has retired from and is actually receiving a Retirement Allowance from the Pension Trust Fund, the said Pension Trust Fund, in accordance with the formula devised in the case of Majauskas v. Majauskas, 61 N.Y.2d 481 (1984), is hereby directed to pay to the Wife, that portion of the Husband's Retirement Allowance which is equal to *FIFTY PERCENT (50%)* of the product obtained by multiplying the total amount of the monthly Retirement Allowance due the Husband, by the Coverture Fraction.

The Wife is entitled to receive a monthly benefit payable until the earlier of the death of the Husband or the death of the Wife. If the Husband predeceases the Wife, and at the time of the Husband's Retirement, he chose a death benefit option naming the Wife as beneficiary, the benefits shall continue to the Wife under said option.

(Local Union #3 continued)

The Husband Wife shall each be responsible for their own federal, state and local income and any other taxes attributable to any and all payments made from the Pension Trust Fund which are received by the Husband and Wife respectively.

The Wife is entitled to benefits as of the first of the month following the Administrator's receipt of a Court certified copy of a valid QDRO.

In the event the Wife dies, all rights to the Pension Trust Fund benefits shall revert to the Husband.

Version 2 – Specific Percentage

Since the Husband has retired from and is actually receiving a Retirement Allowance from the Pension Trust Fund, the said Pension Trust Fund, is hereby directed to pay to the Wife that portion of the Husband's monthly retirement allowance which is equal to *FIFTY PERCENT (50%)* of the actual amount of the monthly Retirement Allowance the Husband is currently receiving.

The Wife is entitled to receive a monthly benefit payable until the earlier of the death of the Husband or the death of the Wife. If the Husband predeceases the Wife, and at the time of the Husband's Retirement, he chose a death benefit option naming the Wife as beneficiary, the benefits shall continue to the Wife under said option.

The Husband Wife shall each be responsible for their own federal, state and local income and any other taxes attributable to any and all payments made from the Pension Trust Fund which are received by the Husband and Wife respectively.

The Wife is entitled to benefits as of the first of the month following the Administrator's receipt of a Court certified copy of a valid QDRO.

In the event the Wife dies, all rights to the Pension Trust Fund benefits shall revert to the Husband.

The following language awards the Wife benefits from the defined contribution type plans sponsored by Local Union #3 of the Joint Industry Board of the Electrical Industry:

With respect to the **Annuity Plan**, the Wife is assigned *FIFTY PERCENT (50%)* of the Husband's account balance that accumulated during the parties' marriage, to wit: from <INSERT DATE OF MARRIAGE> until the date of the division of marital assets, that being <INSERT MARITAL ASSET CUTOFF DATE>. The Wife's allocation **shall/shall not** be credited with earnings or losses from the date indicated above through the date the transfer of assets is completed. If the account balance is greater

The defined contribution type plans sponsored by Local Union #3 of the Joint Industry Board of the Electrical Industry (*continued*)

than \$5,000, benefit payments to the Wife shall be made in monthly installments up to \$2,500 beginning on the date selected by the Wife. In addition, a one-time lump sum of \$20,000 is allowed in addition to the monthly \$2,500 distribution. If the account balance is \$5,000 or less, payment shall be made in a lump sum as of the date permitted under the Plan. Payments, however, will not begin before the earliest date that the Husband can begin to receive benefit payments under the Annuity Plan or, if earlier, the date the Husband reaches age 50. The amount awarded to the Wife shall be separately accounted for under the Wife's name and Social Security number and in the same manner as other accounts maintained in the Plan until benefits are distributed.

With respect to the **Deferred Salary Plan of the Electrical Industry 401(k) Plan**, the Wife is assigned *FIFTY PERCENT (50%)* of the Husband's DSP account balance that accumulated during the parties' marriage, to wit: from <INSERT DATE OF MARRIAGE> until the date of the division of marital assets, that being <INSERT MARITAL ASSET CUTOFF DATE>. The Wife's allocation **shall/shall not** be credited with earnings or losses from the date indicated above through the date the transfer of assets is completed. The Wife may elect to receive payment as of the earliest date permitted under the Plan after completing all applicable administrative forms and submitting them to Mercer. The Wife's assigned balance shall be proportionately deducted from the Husband's account balance based on the Husband's investment elections in effect at the time of transfer. In the event the Husband has an outstanding loan balance, this loan balance **shall/shall not** affect the Wife's award. The Wife's assigned balance shall be initially invested in the same 401(k) Plan funds as the Husband's at the time of transfer.

With respect to the **Additional Security Benefits Plan (ASBF)**, the Wife shall be assigned *FIFTY PERCENT (50%)* of the Wife's account balance that accumulated during the parties' marriage, to wit: from <INSERT DATE OF MARRIAGE> until the date of the division of marital assets, that being <INSERT MARITAL ASSET CUTOFF DATE>. The Wife's allocation **shall/shall not** be credited with earnings or losses from the date indicated above through the date the transfer of assets is completed. The Wife may elect to receive a weekly distribution in an amount up to \$777, less the withholding of all applicable taxes. The Wife will notify the Administrator in writing as to when payments are elected. Benefit payments will commence as soon as administratively feasible after a QDRO is determined to be valid, the transfer of assets is completed and the Wife has filed a written request. The amount awarded to the Wife shall be separately accounted for under the Wife's name and Social Security number and in the same manner as other accounts maintained in the Plan until benefits are distributed.

The defined contribution type plans sponsored by Local Union #3 of the Joint Industry Board of the Electrical Industry (*continued*)

With respect to the **Health Reimbursement Account (HRA) of the Electrical Industry**, the Wife is assigned FIFTY PERCENT (50%) of the Participant's account balance as of <INSERT MARITAL ASSET CUTOFF DATE>. The Wife's allocation **shall/shall not** be credited with earnings or losses from the date indicated above through the date a separate account is set up for the Wife. Once the Wife's separate account is set up, she may begin to submit valid medical claims, so that she may begin to receive reimbursements from this account.

To the extent permitted by any of the defined contribution plans sponsored by Local Union #3 of the Joint Industry Board of the Electrical Industry, the Wife may designate a beneficiary to receive payment of the Wife's remaining interest, if any, upon the Wife's death. The death of the Husband, after the Plans' receipt of a court certified Order, will not affect any of the benefits assigned to the Wife.

With the exception of the **Health Reimbursement Account of the Electrical Industry**, the Wife shall include in gross income for the tax years of receipt all benefits that the Wife receives, except to the extent that any such amount is treated as a nontaxable rollover under Section 402 of the Internal Revenue Code.

Plan Name:
The International Brotherhood of Electrical Workers' Pension Benefit Fund (IBEW PBF)
General Plan Information:
<ul style="list-style-type: none"> • This Plan's benefit is a union dues financed pension plan that does not accept employer contributions. Because it is a unique Fund under Federal Law, it is exempt from ERISA's participation and vesting rules and is not subject to ERISA's joint and survivor benefit rules. They will only pay the benefit to the Former Spouse for the lifetime of the Husband, not for the Former Spouse's lifetime, and they will not allow the Former Spouse to be treated as the surviving spouse for any death benefits. • Arrearages cannot be included in an Order.
Related Plans:
<ul style="list-style-type: none"> • The National Electrical Benefit Fund (NEBF) • Additional Plans that may be sponsored by the member's Local Union in the Electrical Industry.
Separate or Shared Domestic Relations Order (DRO):
This Plan will only accept a Shared Interest Order.
Suggested Agreement Language:
<p><i>Choose one of the following options for Active Husbands:</i></p> <p><i>Option 1 – Coverture Fraction</i></p> <p>The term "Coverture Fraction" represents that portion of the Husband's retirement benefit acquired during the parties' marriage, and shall be defined to mean a fraction. The numerator of said fraction is the total credited service or pension credits earned by the Husband from the Husband's date of initial participation in the IBEW Pension Benefit Fund, or from the date of the parties' marriage, that being <INSERT DATE OF MARRIAGE>, whichever is later, up to the date of the division of marital assets, that being, <INSERT MARITAL ASSET CUTOFF DATE>, and the denominator of which is the total credited service or pension credits earned by the Husband, from the Husband's date of initial participation in the IBEW Pension Benefit Fund, up to the date of the Husband's retirement, termination or death.</p> <p style="text-align: center;"><i>OR</i></p> <p><i>Option 2 – Marital Portion</i></p> <p>The Wife shall be entitled to monthly payments described as follows: When the Husband goes into payment status under the terms of the IBEW Pension Benefit Fund, the Wife is entitled to one half of that portion of each monthly benefit which was earned from the Husband's date of initial participation, or the date of the parties' marriage, that being <INSERT DATE OF MARRIAGE>, whichever is later, up to the date of the division of marital assets, that being, <INSERT MARITAL ASSET CUTOFF DATE>. The Wife's portion shall be determined prior to any reductions for any optional form of payment which may be chosen by the Husband at the time of his retirement.</p>

(IBEW PBF continued)

OR

Option 3– Percentage as of a Specific Cutoff Date

The Wife shall be entitled to monthly payments described as follows: When the Husband goes into payment status under the terms of the IBEW Pension Benefit Fund, the IBEW Pension Benefit Fund is hereby directed to pay to the Wife that portion of the Husband's monthly Retirement Allowance which is equal to FIFTY PERCENT (50%) of the monthly Retirement Allowance due the Husband as defined in the IBEW Pension Benefit Fund, determined as of <INSERT MARITAL ASSET CUTOFF DATE>. The Wife's portion shall be determined prior to any reductions for any optional form of payment which may be chosen by the Husband at the time of his retirement.

The Wife's rights to receive payments shall begin on the date Husband begins to receive monthly benefits. If payments to the Husband are suspended, payments to the Wife shall be suspended during the period of time payments to the Husband are suspended.

Should the Husband predecease the Wife, all payments to the Wife shall cease. In the event the Wife predeceases the Husband, the Husband shall receive the payments designated to the Wife.

Choose one of the following options for Retired Husbands:

Option 1 – Coverture Fraction

The term "Coverture Fraction" represents that portion of the Husband's retirement benefit acquired during the parties' marriage, and shall be defined to mean a fraction. The numerator of said fraction is the total credited service or pension credits earned by the Husband from the Husband's date of initial participation in the IBEW Pension Benefit Fund, or from the date of the parties' marriage, that being <INSERT DATE OF MARRIAGE> whichever is later, up to the date of the division of marital assets, that being, <INSERT MARITAL ASSET CUTOFF DATE>, and the denominator of which is the total credited service or pension credits earned by the Husband, from the Husband's date of initial participation in the IBEW Pension Benefit Fund, up to the date of the Husband's retirement.

Since the Husband is in payment status under the terms of the IBEW Pension Benefit Fund, the IBEW Pension Benefit Fund is hereby directed to pay to the Wife that portion of the Husband's monthly Retirement Allowance which is equal to FIFTY PERCENT (50%) of the product obtained by multiplying the total amount of the monthly Retirement Allowance due the Husband as defined in the IBEW Pension Benefit Fund, by the Coverture Fraction.

(IBEW PBF continued)

OR

Option 2– Specific Percentage OR Specific Dollar Amount of the Retirement Allowance

Since the Husband is in payment status under the terms of the IBEW Pension Benefit Fund, the IBEW Pension Benefit Fund is hereby directed to pay to the Wife that portion of the Husband's monthly Retirement Allowance which is equal to _____ (____%) OR _____ dollars (\$_____) of the monthly Retirement Allowance due the Husband as defined in the IBEW Pension Benefit Fund.

The Wife's rights to receive payments shall begin as soon as administratively practical. If payments to the Husband are suspended, payments to the Wife shall be suspended during the period of time payments to the Husband are suspended.

Should the Husband predecease the Wife, all payments to the Wife shall cease. In the event the Wife predeceases the Husband, the Husband shall receive the payments designated to the Wife.

Plan Name:
The National Electrical Benefit Fund (NEBF)
<ul style="list-style-type: none"> • This is a Taft-Hartley, multi-employer, defined benefit pension plan that provides retirement benefit and related benefits to employees in the electrical industry. • Members accumulate credit in NEBF based upon their years of Covered Employment. • Qualifications for benefits and the amount of those benefits are based upon a Husband's years of service with Covered Employers, age at retirement, type of benefit selected and the pension rate at time of retirement.
Related Plans:
<ul style="list-style-type: none"> • The International Brotherhood of Electrical Workers' Pension Benefit Fund (IBEW PBF). • Additional Plans that may be sponsored by the member's Local Union in the Electrical Industry.
Separate or Shared Domestic Relations Order (DRO):
An Order can be written for either a Separate or Shared Interest.
Suggested Agreement Language:
<p><i>Coverture Fraction – Separate Interest</i></p> <p>The term "Coverture Fraction" represents that portion of the Husband's retirement benefit acquired during the parties' marriage, and shall be defined to mean a fraction. The numerator of said fraction is the total credited service or pension credits the Husband began earning pension credits under the National Electrical Benefit Fund ("NEBF"), or from the date of the parties' marriage, that being <INSERT DATE OF MARRIAGE> whichever is later, up to the date of the division of marital assets, that being, <INSERT MARITAL ASSET CUTOFF DATE>, and the denominator of which is the total credited service or pension credits earned by the Husband, from the Husband's date of initial participation in the National Electrical Benefit Fund ("NEBF"), up to the date of that the Wife elects to begin collection of benefits if the Husband has not yet retired, terminated employment or died. The Wife may not elect to receive benefits earlier than the date the Husband attains Earliest Retirement Age.</p> <p>At such time after the Earliest Retirement Age of the Husband, when the Husband actually retires or the date the Wife elects to commence payment of her portion of the Retirement Allowance if the Husband has not yet retired under the terms of the National Electrical Benefit Fund ("NEBF"), the Plan is hereby directed to pay to the Wife that portion of the Husband's monthly Retirement Allowance which is equal to FIFTY PERCENT (50%) of the product obtained by multiplying the total amount of the monthly Retirement Allowance due the Husband as defined in the National Electrical Benefit Fund ("NEBF"), by the Coverture Fraction. The Wife shall be entitled to a monthly annuity payable for her lifetime, which shall be actuarially adjusted to reflect the life expectancy of the Wife at the Commencement Date selected by the Wife. The Wife shall be entitled to a proportional share of COLA increases, if any.</p>

(NEBF continued)

The Wife may elect to commence her benefits under the Plan at any time on or after the date the Husband attains the "earliest retirement age" as such term is defined in the Plan and Section 414(p) of the Internal Revenue Code. Further, in the event the Husband becomes eligible to commence benefits at an earlier date as the result of a disability retirement, then the Wife shall commence her share of the benefits at such earlier date. Notwithstanding the above, the Wife shall commence her share of the benefits no later than the Husband's actual date of benefit commencement.

In the event the Husband predeceases the Wife and neither the Husband nor the Wife has commenced benefits under the Plan, the Wife shall be treated as the surviving spouse for the purpose of the pre-retirement survivor annuity. In the event the Husband is not remarried at the time of death, the Wife shall receive the entire pre-retirement survivor annuity. If the Husband is remarried, the Wife shall receive the community interest share of the pre-retirement survivor annuity.

In the event the Husband predeceases the Wife after the Husband or Wife has commenced benefits under the Plan, the Husband's death will have no effect on the Wife's benefit.

In the event the Wife predeceases the Husband prior to the Wife's commencement of the benefits, all rights to the Plan benefits shall revert to the Husband.

If the Wife predeceases the Husband after the Wife's commencement of benefits, payments to the Wife shall cease, but there shall be no adjustment to the Husband's benefit

If the Husband returns to covered employment after the entry of a Domestic Relations Order, and as a result, earns additional years of credited service, the Wife's benefit will not be increased to reflect those additional years of credited service. The Wife's benefits will not be suspended if the Husband returns to covered employment and the Husband's benefits are thereby suspended.

In the event the Wife remarries the Husband, or marries another individual, the benefit paid to the Wife shall continue being paid.

Coverture Fraction – Retired Status

The term "Coverture Fraction" represents that portion of the Husband's retirement benefit acquired during the parties' marriage, and shall be defined to mean a fraction. The numerator of said fraction is the total credited service or pension credits the Husband began earning pension credits under the National Electrical Benefit Fund ("NEBF"), or from the date of the parties' marriage, that being <INSERT DATE OF MARRIAGE> whichever is later, up to the date of the division of marital assets, that being, <INSERT MARITAL ASSET CUTOFF DATE>, or up to the Husband's actual retirement date, whichever is earlier, and the denominator of which is the total credited service or pension credits earned by the Husband, from the Husband's date of initial participation in the National Electrical Benefit Fund ("NEBF"), up to the Husband's actual retirement date.

(NEBF continued)

Since the Husband has retired and is in payment status under the terms of the National Electrical Benefit Fund ("NEBF"), is hereby directed to pay to the Wife that portion of the Husband's monthly Retirement Allowance which is equal to fifty percent (50%) of the total amount of the monthly Retirement Allowance due the Husband as defined in the National Electrical Benefit Fund ("NEBF"), multiplied by the Coverture Fraction. The Wife shall be entitled to a proportional share of COLA increases, if any.

Payments to the Wife will commence as soon as administratively practicable upon Qualification of the Order, and shall be payable to her until the earlier of the death of the Wife or the death of the Husband. If the Husband predeceases the Wife, death benefits, if any, will be payable to the beneficiary of record. In the event the Wife predeceases the Husband, the Wife's benefit shall revert to the Husband.

If benefit payments are being made to the Wife and the Husband returns to covered employment and Husband's benefit payments are thereby suspended, the benefit payments to Wife shall not be suspended, but if Husband re-retires with additional years of credited service, the Wife's benefits shall not be increased as a result of those additional years of credited service.

In the event the Wife remarries the Husband, or marries another individual, the benefit paid to the Wife shall continue being paid.

Potpourri of Stipulation Language

This sampling of suggested stipulation language contains specific language for the following plans:

ERISA Plans

- **Defined Benefit Pensions Structured as a Separate Interest**
- **Defined Benefit Pensions Structured as a Shared Interest for an Active Participant**
- **Defined Benefit Pensions Structured as a Shared Interest for a Retired Participant**
- **Defined Contribution Plans/401(k) Plans**

- **NYS & Local Employees' Retirement System,**
- **NYS & Local Police & Fire Retirement System**
- **NYS Teachers' Retirement System**
- **NYC Employees' Retirement System (NYCERS)**
- **NYC Teachers' Retirement System (NYCTRS)**
- **Board of Education Retirement System (BERS)**
- **NYPD and NYFD**

These documents may be downloaded as a PDF or in MS Word format from our website at www.lexpen.com. Just click on the “Stip Language” tab on the main page, then choose Potpourri of Stipulation Language.

This sample is available only to current clients of Lexington. You must log in with your Username and Password. If you do not know your Username or Password, please call our office and we will provide it to you.

Sample Defined Benefit Pension Stipulation Language

Structured as a Separate Interest

The parties agree that the Husband has a beneficial interest in a defined benefit pension plan. A Domestic Relations Order will be prepared directing that the Wife shall be entitled to 50% of the marital interest in said plan as provided by the Court of Appeals in **Majauskas v Majauskas**, 61 N.Y.2d 481, 474 N.Y.S. 2d 699 (1984). The specific terms of the division of this asset are as follows:

The name of the Plan for the Order is the _____ (the "Plan"). Any successor to this Plan shall also be subject to the terms of the Order.

The Participant in the Plan is _____.

The Alternate Payee is the spouse or former spouse, _____.

Date of Determination: The date that the benefit commences to the Alternate Payee.

Accrued Benefit: An Accrued Benefit is the Participant's monthly benefit, determined as if he/she terminated employment or retired on the Date of Determination. A Participant is vested if he/she has a nonforfeitable right to a benefit under a Plan.

The Alternate Payee is awarded a portion of the Participant's benefit that accrued during the marital period ("Marital Interest"). The Marital Interest shall be a fraction, defined as follows: The numerator of said fraction shall be the total number of months of credited service between the Participant's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up

to the date of the division of marital assets, that being _____, and the denominator shall be the total number of months of credited service up to the earlier of the termination of the Participant's employment, retirement, or commencement of payments to the Alternate Payee. The Alternate Payee is awarded 50% of the Marital Interest, multiplied by the Accrued Benefit.

Any actuarial reduction that might be necessary to base the Alternate Payee's benefit on the Alternate Payee's lifetime should be applied to the Alternate Payee's benefit. Further, early commencement reductions shall be made as necessary to reflect commencement of the Alternate Payee's benefit prior to the Participant's normal retirement age or prior to the commencement of benefit payments to the Participant. Except as provided below, if such reductions are required, they shall be determined on the basis of the Plan's actuarial assumptions and not on the basis of any subsidized early retirement factors contained in the Plan.

If, prior to the time that the Alternate Payee has commenced receiving benefits, the Participant elects to receive an early retirement benefit and receives an early retirement subsidy, the amount payable to the Alternate Payee shall be calculated so that the Alternate Payee's benefit shall be increased by a proportionate share of any such early retirement subsidy.

If, after the time that the Alternate Payee has commenced receiving benefits, the Participant elects to receive an early retirement benefit and receives an early retirement subsidy, the amount payable to the Alternate Payee may be recomputed as necessary, so that the amount awarded to the Alternate Payee shall be increased by a proportionate share of any such early retirement subsidy.

If the Plan pays a cost-of-living increase or any other post-retirement benefit increase to the Participant, the amount of any benefit payment the Alternate Payee is receiving will be increased in proportion to the Alternate Payee's share of the Participant's benefit.

Except as otherwise noted, the Accrued Benefit assigned to the Alternate Payee shall be paid to the Alternate Payee for her lifetime in any form available in accordance with the provisions of the Plan. However, the Alternate Payee's benefits may not be paid as a joint and survivor annuity naming the Alternate Payee's subsequent spouse as the survivor. If the Alternate Payee's benefit has a present value of \$5,000 or less, then the Plan may choose to distribute, or the Alternate Payee may elect to receive, the benefit as an immediate lump sum.

The Alternate Payee may begin receiving her benefit payments on or after the earliest date on which the payments may begin under the Plan and the law, as she selects. In no event can the Alternate Payee defer commencement of benefits later than the Participant's actual commencement date.

The benefit assigned to the Alternate Payee is calculated as a separate interest benefit over her lifetime. The benefit awarded hereinabove will not change if the Participant dies prior to the Alternate Payee. Therefore, if the Participant dies prior to the commencement of benefit payments to either the Participant or the Alternate Payee, the benefit awarded to the Alternate Payee hereinabove shall constitute the Alternate Payee's pre-retirement surviving spouse benefit.

However, if the Plan does not provide for a separate interest benefit for the Alternate Payee prior to commencement of benefits to the Alternate Payee, then for the purpose of the Order, the Alternate Payee shall be treated as a surviving spouse of the Participant for purposes of the Qualified Preretirement Survivor Annuity (QPSA) under the Plan, so that in the event the Participant dies prior to his retirement and prior to the time the Alternate Payee begins to receive her benefits under the Plan, the Alternate Payee is awarded 50% of the pre-retirement death benefit provided under the Plan as calculated under the Marital Interest hereinabove set forth.

The death of the Participant after the benefits are in pay status to the Alternate Payee shall have no effect on the payment of the benefit assigned to the Alternate Payee.

If the Alternate Payee dies prior to the commencement of the Alternate Payee's benefit, the assigned benefit will become payable to the Alternate Payee's designated beneficiary if allowable under the rules of the Plan, otherwise, the benefit shall revert to the Participant.

If the Alternate Payee dies after the Alternate Payee's benefits commence, death benefits will be paid in accordance with the form of payment elected by the Alternate Payee at commencement.

This matter arises from an action for divorce or legal separation in this Court under the case number set forth at the beginning of this Stipulation. Accordingly, this Court has jurisdiction to issue a Domestic Relations Order.

In the event the Plan Administrator determines that the Order is not a Qualified Domestic Relations Order, both parties shall cooperate with the Plan Administrator in making any changes needed for it to become qualified. This includes signing all necessary documents. For this purpose, this Court expressly reserves jurisdiction over the dissolution proceeding involving the Participant, the Alternate Payee, and the Participant's interest in the Plan.

For purposes of Sections 402 and 72 of the Code, any Alternate Payee who is the spouse or former spouse of the Participant shall be treated as the distributee of any distribution or payments made to the Alternate Payee under the terms of the Order and, as such, will be required to pay the appropriate federal, state, and local income taxes on such distributions.

If the Plan inadvertently pays to the Participant any benefit that is assigned to the Alternate Payee pursuant to the terms of the Order, the Participant will immediately

reimburse the Alternate Payee to the extent that the Participant has received such benefit payments and shall forthwith pay such amounts so received to the Alternate Payee within ten (10) days of receipt.

If the Plan inadvertently pays to the Alternate Payee any benefit that is actually payable to the Participant, the Alternate Payee must make immediate reimbursement to the Participant. If the Plan inadvertently pays to the Participant any benefit that is actually payable to the Alternate Payee, the Participant must make immediate reimbursement to the Alternate Payee.

If the Plan is terminated, whether on a voluntary or involuntary basis, and the Participant's benefits become guaranteed by the Pension Benefit Guaranty Corporation (PBGC), the Alternate Payee's benefits, as stipulated herein, will also be guaranteed to the same extent in accordance with the Plan's termination rules and in the same ratio as the Participant's benefits are guaranteed by the PBGC.

Sample Defined Benefit Pension Stipulation Language

Structured as a Shared Interest for an Active Participant

The parties agree that the Husband has a beneficial interest in a defined benefit pension plan. A Domestic Relations Order will be prepared directing that the Wife shall be entitled to 50% of the marital interest in said plan as provided by the Court of Appeals in **Majauskas v Majauskas**, 61 N.Y.2d 481, 474 N.Y.S. 2d 699 (1984). The specific terms of the division of this asset are as follows:

The Participant in the Plan is _____.

The Alternate Payee is the spouse or former spouse, _____.

This Order applies to the _____ (the "Plan"). Any successor to this Plan shall also be subject to the terms of the Order.

Date of Determination: The earlier of the date of the termination of the Participant's employment or retirement.

Accrued Benefit: An Accrued Benefit is the Participant's monthly, vested benefit, determined as if he terminated employment or retired on the Date of Determination. A Participant is vested if he has a nonforfeitable right to a benefit under a Plan.

The Alternate Payee is assigned a portion of the Participant's benefit that accrued during the marital period ("Marital Interest"). The Marital Interest shall be a fraction, defined as follows: The numerator of said fraction shall be the total number of months of credited service between the Participant's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, and the

denominator shall be the total number of months of credited service up to the earlier of, the Participant's retirement, termination of employment or death. The Alternate Payee is awarded 50% of the Marital Interest, multiplied by the Accrued Benefit.

If the Plan pays a cost-of-living increase or any other post-retirement benefit increase to the Participant, the amount of any benefit payment to the Alternate Payee, will be increased in proportion to the Alternate Payee's share of the Participant's benefit.

After the Alternate Payee commences payment, the Alternate Payee shall have no right to any other increase in the Participant's benefit under the Plan caused by the service, earnings, separation programs, or Plan amendments occurring subsequent to benefits commencement. Neither shall the Alternate Payee have any right to the portion of the Participant's retirement benefit under the Plan that is not assigned under this Stipulation.

The Alternate Payee is not entitled to elect a form of payment. The Alternate Payee's benefits will be paid from the Participant's monthly benefit payment, in accordance with the amount of payment as determined under the Marital Interest formula hereinabove set forth.

The Alternate Payee will commence payment if, as, and when, the Participant elects to commence benefits.

In the event of the death of the Participant prior to his commencement of benefits, the Alternate Payee shall be designated as a surviving spouse for the purposes of the Qualified Preretirement Survivor Annuity (QPSA) benefit payable on the percentage of the benefit assigned under the Marital Interest formula. Under this option, the Alternate Payee will receive her share of the QPSA benefit upon the death of the Participant.

If the Alternate Payee predeceases the Participant prior to the commencement of benefit payments to the Alternate Payee, the benefit otherwise payable to the Alternate Payee reverts to the Participant.

If the Alternate Payee is to be named as a beneficiary of any post-retirement death benefit, use the following paragraph:

In the event of the death of the Participant after commencement of benefits, the Alternate Payee is designated as a surviving spouse for purposes of the Qualified Joint and Survivor Annuity (QJSA) benefit payable as 50% of the Marital Interest. Under this option, the Alternate Payee will receive her share of the QJSA benefit upon the death of the Participant.

If the Alternate Payee dies after the Alternate Payee's benefits commence, the benefit otherwise payable to the Alternate Payee reverts to the Participant.

This matter arises from an action for divorce or legal separation in this Court under the case number set forth at the beginning of this Stipulation. Accordingly, this Court has jurisdiction to issue this Order.

In the event the Plan Administrator determines that the Domestic Relations Order is not a Qualified Domestic Relations Order, both parties shall cooperate with the Plan Administrator in making any changes needed for it to become qualified. This includes signing all necessary documents. For this purpose, this Court expressly reserves jurisdiction over the dissolution proceeding involving the Participant, the Alternate Payee, and the Participant's interest in the Plan.

For purposes of Sections 402 and 72 of the Code, any Alternate Payee who is the spouse or former spouse of the Participant shall be treated as the distributee of any distribution or payments made to the Alternate Payee under the terms of the Order and, as such, will be required to pay the appropriate federal, state, and local income taxes on such distributions.

If the Plan inadvertently pays to the Participant any benefit that is assigned to the Alternate Payee pursuant to the terms of this Order, the Participant will immediately reimburse the Alternate Payee to the extent that the Participant has received such benefit payments and shall forthwith pay such amounts so received to the Alternate Payee within ten (10) days of receipt.

If the Plan inadvertently pays to the Alternate Payee any benefit that is actually payable to the Participant, the Alternate Payee must make immediate reimbursement. If the Participant's benefits have not begun, the Alternate Payee shall immediately reimburse the Plan. If the Participant's benefits have begun, the Alternate Payee shall immediately reimburse the Participant. In either case, the Alternate Payee must reimburse to the extent that she has received such benefit payments and shall forthwith pay such amount so received to either the Plan or the Participant within ten (10) days of receipt.

If the Plan is terminated, whether on a voluntary or involuntary basis, and the Participant's benefits become guaranteed by the Pension Benefit Guaranty Corporation (PBGC), the Alternate Payee's benefits, as stipulated herein, will also be guaranteed to the same extent in accordance with the Plan's termination rules and in the same ratio as the Participant's benefits are guaranteed by the PBGC.

Sample Defined Benefit Pension Stipulation Language

Structured as a Shared Interest for a Retired Participant

The parties agree that the Husband **is retired** and has a beneficial interest in a defined benefit pension plan. A Domestic Relations Order will be prepared directing that the Wife shall be entitled to 50% of the marital interest in said plan as provided by the Court of Appeals in **Majauskas v Majauskas**, 61 N.Y.2d 481, 474 N.Y.S. 2d 699 (1984). The specific terms of the division of this asset are as follows:

The name of the Plan is the _____ (the "Plan"). Any successor to this Plan shall also be subject to the terms of the Order.

The Participant in the Plan is _____.

The Alternate Payee is the spouse or former spouse, _____.

Accrued Benefit: An Accrued Benefit is the Participant's monthly, vested benefit, as of the Participant's actual date of retirement. A Participant is vested if he has a nonforfeitable right to a benefit under a Plan.

The Alternate Payee is assigned a portion of the Participant's benefit that accrued during the marital period ("Marital Interest"). The Marital Interest shall be a fraction, defined as follows: The numerator of said fraction shall be the total number of months of credited service between the Participant's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, or the date of the Participant's retirement, whichever is earlier, and the denominator shall be the total number of months of credited service up to the date of his actual retirement. The

Alternate Payee is awarded 50% of the Marital Interest, multiplied by the Accrued Benefit.

If the Alternate Payee is owed arrearages, use paragraph 1 for lump-sum amounts or paragraph 2 if the participant has already commenced receiving benefits and the DRO has not yet been served:

Alternative 1. - The Plan is directed to deduct the additional sum of \$_____ monthly from the Participant's retirement allowance, on behalf of the Alternate Payee, until the Alternate Payee's outstanding payments in the amount of \$25,000.00, are satisfied in full.

Or;

Alternative 2. - The Alternate Payee is entitled to arrearages. The Plan shall calculate the number of months between the date of the Participant's commencement of benefits, up to the date that payments actually commence to the Alternate Payee. The total number of months shall be multiplied by the monthly amount due the Alternate Payee as calculated under the above formula. The result of this calculation shall be the Total Arrearages due the Alternate Payee, and shall be payable at the rate of \$_____ monthly from the Participant's retirement allowance, on behalf of the Alternate Payee, until the Total Arrearages have been paid, or the earlier of the Participant's death or the Alternate Payee's death, whichever occurs first.

If the Plan pays a cost-of-living increase or any other post-retirement benefit increase to the Participant, the amount of any benefit payment the Alternate Payee is receiving will be increased in proportion to the Alternate Payee's share of the Participant's benefit.

The Alternate Payee is not entitled to elect a form of payment. The Alternate Payee's benefits will be paid from the Participant's monthly benefit payment, in accordance with the amount of payment as determined under the Marital Interest formula hereinabove set forth.

The Alternate Payee will commence payment as soon as administratively practicable after a Court Certified Domestic Relations Order is qualified by the Plan.

Since the Participant has already retired, any death benefit option chosen at the time of retirement, shall remain in effect.

If the Alternate Payee dies after the Alternate Payee's benefits commence, the benefit otherwise payable to the Alternate Payee reverts to the Participant.

For purposes of Sections 402 and 72 of the Code, any Alternate Payee who is the spouse or former spouse of the Participant shall be treated as the distributee of any distribution or payments made to the Alternate Payee under the terms of a Domestic Relations Order and, as such, will be required to pay the appropriate federal, state, and local income taxes on such distributions.

If the Plan inadvertently pays to the Participant any benefit that is assigned to the Alternate Payee pursuant to the terms of a Domestic Relations Order, the Participant will immediately reimburse the Alternate Payee to the extent that the Participant has received such benefit payments and shall forthwith pay such amounts so received to the Alternate Payee within ten (10) days of receipt.

If the Plan inadvertently pays to the Alternate Payee any benefit that is actually payable to the Participant, the Alternate Payee must make immediate reimbursement to the Participant. If the Plan inadvertently pays to the Participant any benefit that is actually payable to the Alternate Payee, the Participant must make immediate reimbursement to the Alternate Payee.

If the Plan is terminated, whether on a voluntary or involuntary basis, and the Participant's benefits become guaranteed by the Pension Benefit Guaranty Corporation (PBGC), the Alternate Payee's benefits, as stipulated herein, will also be

guaranteed to the same extent in accordance with the Plan's termination rules and in the same ratio as the Participant's benefits are guaranteed by the PBGC.

Sample Defined Contribution Plan/401(k) Plan

Stipulation Language

Nota Bene: Most defined contribution plans will not allow the Majauskas/Marital Interest formula in the DRO. Nor will they allow for the award of an amount accumulated between two dates. The vast majority of plans require a specific amount or percentage, determined as of a specific date. If the entire account was accumulated during the marriage you should not have any problems. However, many plans have changed recordkeepers over the years. You may run into a problem if the Alternate Payee is awarded gains or losses on an amount determined prior to the date the new recordkeeper took over the account. They will not be able to calculate the gains or losses for the period between the division date and the date that they took over the account. They will reject the Order and you will be back to square one. It is best to come to the negotiating table with knowledge of these issues and an alternative plan. If the account is not all marital, you may need a Tracing Method calculation to determine the marital portion.

The suggested stipulation language is as follows:

The parties agree that the Husband has a beneficial interest in a defined contribution plan. A Domestic Relations Order will be prepared directing that the Wife shall be entitled to a portion of the Participant's account balance as determined below. The specific terms of the division of this asset are as follows:

The name of the Plan is _____ (the "Plan"). Any successor to this Plan shall also be subject to the terms of the Order.

The Participant in the Plan is _____.

The Alternate Payee is the spouse or former spouse, _____.

Account Balance: The Participant's Account Balance is the dollar amount the Participant has a nonforfeitable right to receive from the Plan.

Valuation Date: The Valuation Date is the date on which the Participant's Account Balance will be valued in order to determine the Alternate Payee's designated portion.

Liquidation Date The Liquidation Date is the date the amount assigned to the Alternate Payee is transferred from the Participant's Account Balance to a separate account established for the Alternate Payee. An assignment as of the Liquidation Date assigns a portion of the Participant's current Account Balance.

The Alternate Payee is assigned an amount equal to 50% of the Participant's Account Balance under the Plan as of _____ (Valuation Date). In the event that the Participant had any loans outstanding as of the Valuation Date, the account balance shall be reduced by the outstanding loan balance prior to the calculation of the Alternate Payee's awarded amount. *(If there are any additional amounts payable to the Alternate Payee, you can add them here, **Note:** For US Government employees, the US Thrift Savings Plan with **Not** allow additional amounts.)* In addition to the amount awarded, the Alternate Payee is awarded the additional sum of \$_____, determined as of _____. From the Valuation Date to the Liquidation Date, the amount assigned to the Alternate Payee **shall/shall not** include interest and investment income or losses. The Alternate Payee's interest in the Plan shall be treated as her sole and separate property, and shall be maintained as a separate account for the benefit of the Alternate Payee, subject to all terms and conditions of the Plan. The Alternate Payee's portion shall be proportionately divided among the investment funds in the same manner as the Participant's account(s) is/are allocated.

The Alternate Payee shall receive the portion of the Participant's Account balance assigned to the Alternate Payee in a single lump-sum payment. Such amount shall be adjusted for earnings and losses from the Liquidation Date to the date of distribution to the Alternate Payee. At such time as the Alternate Payee's portion of the account is actually distributed to the Alternate Payee, said amount may be made as a "direct rollover" transfer into an IRA or similar account as designated by the Alternate Payee. Such rollover shall be made in accordance with the terms of the Plan and applicable law. The Alternate Payee shall provide all necessary information and fill out all necessary documents as required by the Plan Administrator to effectuate such transfer.

The Alternate Payee shall be eligible to receive payment as soon as administratively reasonable following the determination that an Order is a Qualified Domestic Relations Order, or, if later, as of the earliest date allowable under the rules of the Plan. In no event can the Alternate Payee begin her benefit later than April 1 following the year in which the Participant attains age 70- 1/2.

If the Participant predeceases the Alternate Payee prior to payment of the Alternate Payee's assigned benefits, the Alternate Payee's benefits will not be affected. In the event of the Participant's death, the Participant's separate Account Balance, shall remain the property of the Participant, and will be payable to the Participant's designated beneficiary or in accordance with the Plan provisions. Therefore, the Alternate Payee shall not be treated as the Participant's surviving spouse for the purpose of the Plan's survivor annuities.

In case of the death of the Alternate Payee prior to distribution of the Alternate Payee's benefits under this Order, the assigned benefits will be paid to the Alternate Payee's designated beneficiary, or, if none, in accordance with Plan provisions.

This matter arises from an action for divorce or legal separation in this Court under the case number set forth at the beginning of this Stipulation. Accordingly, this Court has jurisdiction to issue an Order.

In the event the Plan Administrator determines that the Order is not a Qualified Domestic Relations Order, both parties shall cooperate with the Plan Administrator in making any changes needed for it to become qualified. This includes signing all necessary documents. For this purpose, this Court expressly reserves jurisdiction over the dissolution proceeding involving the Participant, the Alternate Payee, and the Participant's interest in the Plan.

For purposes of Sections 402 and 72 of the Code, any alternate payee who is the spouse or former spouse of the Participant shall be treated as the distributee of any distributions or payments made to the Alternate Payee under the terms of the Order and, as such, will be required to pay the appropriate federal, state, and local income taxes on such distributions.

If the Plan inadvertently pays to the Alternate Payee any benefit that is actually payable to the Participant, the Alternate Payee must make immediate reimbursement to the Participant. If the Plan inadvertently pays to the Participant any benefit that is actually payable to the Alternate Payee, the Participant must make immediate reimbursement to the Alternate Payee.

If the Plan inadvertently pays to the Alternate Payee any benefit that is actually payable to the Participant, the Alternate Payee must make immediate reimbursement. The Alternate Payee must reimburse to the extent that she has received such benefit payments and shall forthwith pay such amount so received to the Plan within ten (10) days of receipt.

If the Plan is terminated, the Alternate Payee shall be entitled to receive her portion of the Participant's benefits as stipulated herein, in accordance with the Plan's termination provisions for participants and beneficiaries.

The Alternate Payee shall be responsible for notifying the Plan Administrator, in writing, of any changes in her name and/or mailing address, subsequent to the entry of an Order. All payments made pursuant to an Order shall be conditioned on the certification by the Alternate Payee and the Participant to the Plan Administrator of such information as the Plan Administrator may reasonably require from such parties to make the necessary calculation of the benefit amounts contained herein.

Sample Pension Stipulation Language for:
NYS & Local Employees' Retirement System,
NYS & Local Police & Fire Retirement System
NYS Teachers' Retirement System

- **NOTE: PARTIES MUST BE DIVORCED FOR THE PENSION FUNDS TO IMPLEMENT AN ORDER. PROOF OF DIVORCE IS REQUIRED.**
- **FYI - All state plans are structured as “Shared Interest” Orders**

Obviously, any of the terms of this sample stipulation may be modified (such as eliminating or modifying the terms of the pre-retirement or post-retirement death benefits, COLA, loans, etc.)

The parties agree that the Husband has a beneficial interest in a defined benefit pension plan. A Domestic Relations Order will be prepared directing that the Wife shall be entitled to 50% of the marital interest in said plan as provided by the Court of Appeals in **Majauskas v Majauskas**, 61 N.Y.2d 481, 474 N.Y.S. 2d 699 (1984). The specific terms of the division of this asset are as follows:

This Order applies to the **New York State** _____ **Retirement System** (the “Retirement System”).

The Participant in the plan is _____.

The Alternate Payee is the spouse or former spouse, _____.

The Retirement System Administrator shall issue separate checks to the Participant and the Alternate Payee for their respective interests in the Retirement System at the time the benefits become payable.

At such time as the Participant has retired from the New York State _____ Retirement System, and is actually receiving a retirement allowance from the Retirement System; the Retirement System, is hereby directed to calculate the Alternate Payee's distribution using the Participant's maximum monthly retirement allowance, prior to any optional modification.

The Alternate Payee shall receive as a distribution, in accordance with the formula devised in the case of *Majauskas v. Majauskas*, 61 NY 2d 481(1984), a portion of the Participant's benefit that accrued during the marital period ("Marital Interest"). The Marital Interest shall be a fraction, defined as follows: The numerator shall be the total number of months of credited service between the Participant's date of initial credited service in the Retirement System, or the date of the parties' marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, and the denominator shall be the total number of months of credited service in the Retirement System which the Participant has at the time of retirement, termination or death. The Alternate Payee is awarded 50.00% of the Marital Interest, multiplied by the Participant's maximum monthly retirement allowance prior to any optional modification.

Should the Participant retire on a disability retirement allowance from the Retirement System, the Retirement System, in accordance with the formula devised in the case of *Majauskas v. Majauskas*, 61 NY 2d 481(1984), is hereby directed to calculate a hypothetical service retirement allowance, based on the Participant's earnings and years of credited service. The Participant's retirement allowance shall be calculated in the same manner as a normal service pension would be calculated without any reduction for ordinary termination of employment. From this hypothetical service retirement benefit, the Retirement System is hereby directed to pay to the Alternate Payee that portion of the Participant's maximum monthly retirement allowance, prior to any optional modification, which is equal to 50.00% of the product obtained by multiplying the

total amount of the hypothetical service retirement amount, by the Marital Interest. Payments shall be made directly to the Alternate Payee.

Should the Participant's hypothetical service retirement allowance exceed the Participant's disability benefit, then the Retirement System is directed to pay the Alternate Payee that portion of the Participant's maximum monthly disability retirement allowance, prior to any optional modification, which is equal to 50.00% of the product obtained by multiplying the total amount of the maximum monthly disability retirement allowance, by the Marital Interest.

The retirement allowance shall be deemed to include any Cost Of Living Adjustments (COLA), which are paid by the said Retirement System to the Participant.

The Participant is directed to designate the Alternate Payee as a beneficiary of the Retirement System, so that in the event the Participant dies prior to retirement, the Alternate Payee shall receive 50.00% of any available pre-retirement death benefit calculated pursuant to the Marital Interest formula.

The Participant is directed to elect at the time of retirement, assuming the Alternate Payee is then living, to designate the Alternate Payee as a beneficiary pursuant to the terms of the Special Joint Allowance Option, for the purpose of providing the Alternate Payee, upon the Participant's death, with a monthly retirement allowance payable for life based upon the distribution calculated pursuant to the Marital Interest formula.

The cost of the Participant's retirement option election shall be shared proportionately between the Participant and Alternate Payee.

In the event that the Participant elects to choose a Pop-Up option, any cost associated with the Participant's election of the pop-up feature shall be borne by the Participant.

Payments to the Alternate Payee will begin effective with the Participant's retirement date.

If the Participant is in a contributory plan, the Alternate Payee's share of the pension shall not be impacted by reductions to the Participant's pension for any outstanding loans at the time of the Participant's retirement.

If the Participant is in a contributory plan and receives a return of any contributions, the Alternate Payee is entitled to 50.00% of any returned contributions payable to the Participant based on the Marital Interest formula.

If Participant is eligible for and elects to receive a partial lump sum payment (PLS) from the Retirement System pension plans at the time of retirement, the PLS payment will be distributed to the Participant only, and the Alternate Payee's monthly distribution shall be calculated without reduction for the Participant's PLS election.

In the event the Alternate Payee dies prior to or after the benefits commence to him, the benefit that was payable to the Alternate Payee shall revert to the Participant.

If the Plan inadvertently pays to the Alternate Payee any benefit that is actually payable to the Participant, the Alternate Payee must make immediate reimbursement to the Participant. If the Plan inadvertently pays to the Participant any benefit that is actually payable to the Alternate Payee, the Participant must make immediate reimbursement to the Alternate Payee.

The Participant and Alternate Payee shall each be responsible for their own federal, state, and local income and any other taxes attributable to any and all payments made from the Retirement System which are received by the Participant and Alternate Payee respectively.

**Sample Stipulation Language for:
NYC Employees' Retirement System
(NYCERS)**

**NYC Teachers' Retirement System (NYCTRS)
Board of Education Retirement System (BERS)**

- **NOTE: PARTIES MUST BE DIVORCED FOR THE PENSION FUNDS TO IMPLEMENT AN ORDER. PROOF OF DIVORCE IS REQUIRED.**

Obviously, any of the terms of this sample stipulation may be modified (such as eliminating or modifying the terms of the pre-retirement or post-retirement death benefits, COLA, loans, etc.)

A Domestic Relations Order will be prepared directing that the Wife shall receive as a distribution, a portion of the Husband's benefit that accrued during the marital period ("Marital Interest"). As provided by the Court of Appeals in **Majauskas v Majauskas**, 61 N.Y.2d 481, 474 N.Y.S. 2d 699 (1984). The Marital Interest shall be a fraction, defined as follows: The numerator shall be the total number of months of credited service between the Husband's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, and the denominator shall be the total number of months of credited service in the Plan which the Husband has at the time of retirement, termination or death. The Wife is awarded 50% of the Marital Interest, multiplied by the Husband's monthly retirement allowance.

Should the Husband retire on a disability retirement benefit, or convert to a disability benefit after retirement, the Plan is hereby directed to calculate the Wife's share, identified above, using a hypothetical service retirement benefit, based on the Husband's earnings and years of credited service, without reduction for early termination of employment.

The retirement allowance shall be deemed to include any Cost Of Living Adjustment (COLA), which is paid by the said Plan to Husband.

The Husband is directed to designate the Wife as a beneficiary of the Plan, so that in the event the Husband dies prior to retirement, the Wife shall receive 50% of any available pre-retirement death benefit calculated pursuant to the Marital Interest formula.

Note: NYCERS only allows post-retirement death benefit options in 25% increments. Corrections Officers are in 10% increments. You cannot use the Majauskas/Marital interest formula for post-retirement death benefits.

The Husband is directed to elect at the time of retirement, assuming the Wife is then living, to receive benefits pursuant to the terms of the 25% Joint & Survivor Option, for the purpose of providing the Wife, upon the Husband's death, with a monthly retirement benefit payable for life based upon the distribution calculated pursuant to the formula hereinabove set forth.

The cost of the Husband's retirement option election shall be shared proportionately between the Husband and Wife (cost of option could be borne by the Husband or Wife solely). Should the Husband choose to add the Pop Up modification to the option choice specified in this Order, the cost of the Pop Up shall be borne by the Husband.

The Plan is directed to commence payments to the Wife effective with the Husband's retirement date.

The Wife's share of the pension shall not be impacted by reductions to the Husband's pension for any outstanding loans at the time of the Husband's retirement

If the Husband receives a return of contributions in lieu of a pension benefit due to termination of employment, the Wife shall receive 50% of the amount of said returned contributions, accrued during the marital period, to wit, from the Husband's date of initial credited service in the Plan, or the date of the parties'

marriage, that being _____, whichever is later, to the date that the parties ceased sharing marital assets, that being _____, plus interest on said contributions up to the date of distribution to the Wife.

Sample Stipulation Language for NYPD and NYFD

- **NOTE: PARTIES MUST BE DIVORCED FOR THE PENSION FUNDS TO IMPLEMENT AN ORDER. PROOF OF DIVORCE IS REQUIRED.**

Obviously, any of the terms of this sample stipulation may be modified (such as eliminating or modifying the terms of the pre-retirement or post-retirement death benefits, COLA, loans, etc.)

A Domestic Relations Order will be prepared directing that the Wife shall receive as a distribution, a portion of the Husband's benefit that accrued during the marital period ("Marital Interest"). As provided by the Court of Appeals in **Majauskas v Majauskas**, 61 N.Y.2d 481, 474 N.Y.S. 2d 699 (1984), the Marital Interest shall be a fraction, defined as follows: The numerator shall be the total number of months of credited service between the Husband's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, and the denominator shall be the total number of months of credited service in the Plan which the Husband has at the time of retirement, termination or death. The Wife is awarded 50% of the Marital Interest, multiplied by the Husband's monthly retirement allowance.

Should the Husband retire on a disability retirement benefit, or convert to a disability benefit after retirement, the Plan is hereby directed to calculate the Wife's share, identified above, using a hypothetical service retirement benefit, based on the Husband's earnings and years of credited service, without reduction for early termination of employment.

The retirement allowance shall be deemed to include any Cost Of Living Adjustment (COLA), which is paid by the said Plan to Husband.

The Husband is directed to designate the Wife as a beneficiary of the Plan, so that in the event the Husband dies prior to retirement, the Wife shall receive 50% of any available pre-retirement death benefit calculated pursuant to the Marital Interest formula.

The Husband is directed to elect at the time of retirement, assuming the Wife is then living, to receive benefits pursuant to the terms of the Option 4 - Annuity, for the purpose of providing the Wife, upon the Husband's death, with a monthly retirement benefit payable for life based upon the distribution calculated pursuant to the formula hereinabove set forth.

The cost of the Husband's retirement option election shall be shared proportionately between the Husband and Wife [*cost of option could be borne by the Husband or Wife solely*]. Should the Husband choose to add the Pop Up modification to the option choice specified in this Order, the cost of the Pop Up shall be borne by the Husband.

The Plan is directed to commence payments to the Wife effective with the Husband's retirement date.

The Wife's share of the pension shall not be impacted by reductions to the Husband's pension for any outstanding loans at the time of the Husband's retirement.

If the Husband receives a return of contributions in lieu of a pension benefit due to termination of employment, the Wife shall receive 50% of the amount of said returned contributions, accrued during the marital period, to wit, from the Husband's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, to the date that the parties ceased sharing marital assets, that being _____, plus interest on said contributions up to the date of distribution to the Wife.

If, as of the date of the cutoff of marital assets, that being _____, the Husband remains in employment and has excess contributions in his retirement account, the Wife shall receive 50% of a benefit equivalent to the actuarial value of the excess of said excess contributions accrued during the marital period, to wit, from the Husband's date of initial credited service in the Plan, or the date of the parties' marriage, that being _____, whichever is later, up to _____, plus interest up to the date of distribution to the Wife. The Wife's portion of the monthly retirement allowance shall include said excess.

If the Husband is eligible to receive a benefit under the Variable Supplement Fund (VSF), the Wife is awarded 50% of the annual benefit, multiplied by a fraction, the numerator of which is the total years of credited service with Plan, from the Husband's membership date, or from

the parties' date of marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, or the date the Husband qualifies for the VSF (20 years of credited service), whichever is earlier, and the denominator shall be 20 years. The Wife shall receive the same fractional portion of any balance of the VSF payments held in the Husband's Deferred Retirement Option Plan (DROP) account, which are payable upon the Husband's retirement.

The Husband and Wife shall each be responsible for their own federal, state, and local income and any other taxes attributable to any and all payments made from the Plan which are received by the Husband and Wife respectively.

In the event the Wife dies prior to commencement of the defined benefit pension to her, or in the event the Wife predeceases the Husband after the benefits commence to the Husband, the defined benefit pension that was payable to the Wife shall revert to the Husband.

If the Plan inadvertently pays to the Alternate Payee any benefit that is actually payable to the Participant, the Alternate Payee must make immediate reimbursement to the Participant. If the Plan inadvertently pays to the Participant any benefit that is actually payable to the Alternate Payee, the Participant must make immediate reimbursement to the Alternate Payee.

Nothing contained in this Order shall be construed to require the Plan or Plan administrator to provide any form, type or amount of benefit, or any option, not otherwise provided for under the Plan or available by law.

The Plan shall have no obligation or responsibility as a consequence of this matrimonial action apart from the specific directions contained in this Order.

Award Rules for Related Plans:

New York City Police Pension Fund, Article II:

- **Patrolmen's Benevolent Association (PBA) Annuity Fund**
Plan will allow a percentage or dollar amount with a cutoff date no earlier than June 30, 2005. The Plan can calculate gains/losses up to the date of distribution.
- **Sergeants' Benevolent Association (SBA) Annuity Fund**
Plan will allow a percentage or dollar amount as of a cutoff date. A specific date can be used if after 7/1/03. If prior to 7/1/03 the Plan can determine the amount as of the quarterly plan valuation date immediately preceding _____ (cutoff date) **or** next following _____ (cutoff date). The Plan can calculate gains/losses up to the date of distribution.
- **Annuity Fund of the Detectives' Endowment Association, Inc. (DEA)**
Plan will allow a percentage or dollar amount as of a quarter ending date. The Plan will not calculate gains/losses up to the date of distribution.
- **Superior Officers' Council (SOC) Annuity Fund**
Plan will allow a percentage or dollar amount as of a quarter ending date. The Plan will not calculate gains/losses up to the date of distribution.
- **Deferred Compensation Plan / NYCE IRA for Employees of the City of New York and Related Agencies and Instrumentalities (457, 401K, Special 401K Rollover, 401(a), 401K Savings and Incentive Plan, NYCE IRA)**
Plan will allow percentage or dollar amount as of a specified date. The Plan can calculate gains/losses to the date of distribution **–OR–** The Plan also allows a percentage or dollar amount as of the date the account is established. **–OR–** Plan can calculate marital portion if the later of the date of marriage or date of hire are after July 30, 1994. Award can be adjusted for gains/losses from the date of marriage to the date of distribution.

New York City Fire Department Pension Fund, Article 1-B, Subchapter II:

- **Compensation Accrual Fund (CAF) of the Uniformed Firefighters Association**
Plan will calculate the amount that accrued between the date of marriage and the date of the division of marital assets. The Plan can calculate gains/losses up to the date of distribution. Upon promotion, the CAF does not automatically transfer funds to the UFOA. Therefore, a Fire Officer may have two separate annuity fund accounts for which separate authorizations are required to obtain account information.
- **The Annuity Fund of the Uniformed Fire Officers' Association (UFOA)**
Plan will allow a percentage or dollar amount as of a cutoff date if date is after 2001. The Plan will not calculate gains/losses up to the date of distribution.
- **Deferred Compensation Plan / NYCE IRA for Employees of the City of New York and Related Agencies and Instrumentalities (457, 401K, Special 401K Rollover, 401(a), 401K Savings and Incentive Plan, NYCE IRA)**
Same rules as above.