

EXPLANATION OF THE MAINE PUBLIC EMPLOYEES RETIREMENT SYSTEM (MainePERS)
MODEL DOMESTIC RELATIONS ORDER DIVIDING RETIREMENT SYSTEM BENEFITS

(OCTOBER 1992)

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This explanation should be read carefully by anyone who intends to use the accompanying Maine Public Employees Retirement System (MainePERS) model domestic relations order. However, this explanation and the model order cannot replace the advice of an attorney. You should consult your attorney to protect your interest in MainePERS benefits. Be sure that you completely understand the terms of any proposed court order, including any order based in whole or in part on this model, before the judge signs it. While MainePERS can provide you with information about its benefit plan and procedures, it cannot provide you with legal advice or explain court orders for you. Discuss these matters with your attorney.

PURPOSE AND USE. In many divorces, the court will order a division of retirement benefits between the spouse who is the member or retiree of the Retirement System and the spouse who is not a member or retiree . The purpose of a qualified domestic relations order (QDRO) is to permit a retirement system to make direct payment to the party who is not the member, retiree, or beneficiary of the system. Direct payment by MainePERS is not possible, even if the court awards an interest in the benefits to the non-member or retiree, unless the court enters an order that MainePERS determines is "qualified." Also, even if the order is a qualified domestic relations order, no payment will be made to the former spouse until an amount is payable to the MainePERS member or retiree or beneficiary. A qualified domestic relations order does not entitle the former spouse to immediate payment of the portion of the benefit awarded to him or her by the court.

MainePERS has prepared this model order in response to requests from attorneys and their clients for guidance in drafting an acceptable qualified domestic relations order (QDRO). The attached model order contains language that MainePERS finds acceptable in principle for a QDRO. There is no legal requirement that you use this model when preparing an order. However, if you decide to modify the model order, all

changes must meet the criteria of the QDRO statute and MainePERS rules. If the order does not meet all criteria, it will not be accepted as a qualified order, and direct payment by MainePERS to the non-member or retiree spouse or former spouse will not be possible.

Please note that this model is specific to MainePERS. Other retirement systems or plans may not accept an order based on this model. If the court will be dividing benefits from more than one system or plan (for example, the husband's MainePERS benefits and the wife's benefits from her employment with a private company), you may use this model for the division of MainePERS benefits, but you should contact the other retirement system or plan for information on how to draft an order to divide the other benefits. Use this model only when MainePERS benefits of one or both parties are being divided.

If both parties are MainePERS members or retirees, a qualified order is needed if one member or retiree is awarded any part of the other member's or retiree's account or benefits. MainePERS cannot simply transfer money from one member's or retiree's account to the other's after the divorce.

If you and your attorney choose to use the model order, the attorneys for the parties should prepare a proposed order with the specific information called for in the model (for example, names, dates, etc.) and with the appropriate choice of provisions in places where the model has offered alternative provisions.

SUBMISSION OF ORDER FOR REVIEW; FEES AND CHARGES. An order may be submitted to the System for review either before or after having been entered by the court (that is, signed by the judge and filed). A filing fee of \$250.00 must accompany each order submitted for review, whether before or after having been signed by the judge. The check for the filing fee must be a certified check or drawn on an attorney's trust account. Only one filing fee is required for each domestic relations order. No filing fee is required when an order that was submitted before having been signed by the judge is resubmitted after having been signed by the judge. No filing fee is required when an order that was determined to be not qualified is resubmitted after having been amended, provided a motion was filed with the court and substantiation of the filing was

provided to MainePERS before the end of the 30 day appeal period provided by 5 MRSA 17451. If an order is determined to be not qualified and is not amended and resubmitted or appealed before the end of the 30 day appeal period, any resubmission is considered to be the submission of a new order which will require payment of the filing fee.

In addition to the filing fee, MainePERS is authorized by Chapter 103, 5, sub-B, MainePERS rules, to charge for legal and actuarial services necessary in the review of an order. These charges will be at a rate to be determined by the executive director, based upon costs to the System for the services. Before any legal or actuarial services are performed, the person who requested the review of the order will be sent a notification that such services will be needed, with an estimate of the extent of such services and the estimated costs of those services. No charge will be made for the first hour of legal or actuarial services or combination of both. These charges must be paid before a determination is made regarding the issuance of a qualified order.

CERTIFIED COPY. You will need to obtain the approval and signature of a judge on the proposed order after a hearing or settlement by the parties. After the judge has signed the order, one of the parties or attorneys should send a certified copy to MainePERS at the following address:

Maine Public Employees Retirement System
QDRO Determination
State House Station #46
Augusta, Maine 04333-0046

A certified copy may be obtained directly from the clerk of the court which granted the divorce. You should send the original certified copy, not a copy of a certified copy. Also, MainePERS cannot accept a copy that has only been "file-stamped" by the court clerk but that is not a certified copy (i.e., it does not bear a certification by the court clerk that the copy is a true and correct one).

REVIEW PROCEDURE. If the order is submitted before having been entered by the court, the executive director will not make an official determination as to whether or not

the order is a qualified order. However, the executive director will, in writing, inform the person who submitted the order whether or not the order meets the requirements for a qualified domestic relations order, identifying any provisions of 5 MRSA 17059 or Chapter 103 of the Board of Trustees rules (94-411 CMR 103) that the order does not meet.

When MainePERS receives the certified copy, MainePERS will review the order to determine whether it meets all criteria established by 5 MRSA 17059 and Chapter 103, MainePERS rules, and therefore is a qualified order. The law requires this review, even if you have used the MainePERS model order. MainePERS will notify both parties and their attorneys in writing of the determination.

If MainePERS determines that the order is a qualified order, MainePERS will be authorized to make direct payment to the former spouse of the MainePERS member or retiree as required by the order. However, MainePERS will not make payment until an amount or benefit becomes payable to the MainePERS member, retiree, or beneficiary under applicable laws and rules (such as upon withdrawal, retirement, or death of MainePERS member or retiree).

If MainePERS determines that the order is not a qualified order, the parties may return to court to obtain a revised order. If MainePERS does not receive, before the end of the 30 day appeal period, an order that it determines is qualified, MainePERS will pay only the MainePERS member or retiree or beneficiary without further notification to the former spouse when benefits become payable. The determination letter is the final notice to the former spouse that MainePERS cannot make any payment to him or her. The person receiving payment then will have the responsibility to pay the former spouse as directed by the court's order.

There is no time deadline for returning to court to obtain a revised order. However, unless MainePERS receives an amended order before the end of the 30 day appeal period and determines that it is a QDRO, any benefits or amounts that become payable will be paid only to the MainePERS member or retiree or beneficiary. If the entire amount payable by MainePERS to the member or retiree or beneficiary is paid out (such as a refund) prior to the time MainePERS receives an amended order, MainePERS will be unable to pay any amount to the former spouse, even if the new

order is a QDRO. Thus, the former spouse may wish to file a motion for an amendment to the order as soon as possible and to inform MainePERS in writing of the filing and any subsequent court action on the motion. If MainePERS receives substantiation of the filing of a motion for amendment of an order before the end of the 30 day appeal period, any amounts that would be payable to the alternate payee will be held until the amended order is received and a determination is made.

MORE THAN ONE DIVORCE. This model should not be used when the MainePERS member or retiree has had a previous divorce that also affects the member or retiree's MainePERS benefits. Please contact MainePERS for additional information if these circumstances exist.

DIVISION NOT REQUIRED BY MainePERS. Please be aware that MainePERS does not require that MainePERS benefits be divided in a divorce. It is the court that makes the property division according to the marital property laws of the State of Maine. In some cases, the parties may prefer not to divide one party's MainePERS benefits (for example, if both parties have retirement plans of comparable value or if the MainePERS member or retiree "gives up" some other asset of similar worth in order to be able to keep the entire amount of the MainePERS benefits). Especially when there were only a few years of service during the marriage and the member is many years away from retirement, both parties may benefit from a settlement such as this. MainePERS suggests that you discuss this alternative with your attorney and spouse. If MainePERS benefits are not divided, the decree of divorce should specifically address the fact that all MainePERS benefits are awarded to the MainePERS member or retiree . Usually it will not be necessary to send a copy of the decree to MainePERS if benefits are not divided. However, if the spouse of the member or retiree previously contacted MainePERS to make a claim to part of the benefits while the divorce proceedings were pending, it is advisable to send MainePERS a copy of the decree or for both parties to inform MainePERS in writing of the final award of the benefits that the court has made.

If the court divides the MainePERS benefits, the division must be one that MainePERS can administer and that is compatible with the System's governing laws

and rules. Because many courts and attorneys are not familiar with the System's governing laws and rules, it has been difficult for them to prepare orders that MainePERS can actually administer when benefits become payable. The intent of MainePERS in making this model available is to provide an example of an order MainePERS believes is workable, once the court has decided to divide MainePERS benefits. It is not the intent of MainePERS to encourage or require the division of benefits.

UPDATE BENEFICIARY. Whether the benefits are divided or awarded entirely to the MainePERS member or retiree, the member or retiree should provide MainePERS with a new designation of beneficiary after divorce or any other change in family circumstances. Even if the MainePERS member or retiree wants to continue to name the former spouse as beneficiary, a new designation will help avoid future disputes. The member or retiree should contact MainePERS to obtain the appropriate beneficiary designation form. See pages 12-13 of this Explanation for more information on beneficiary designations.

INSERTING INFORMATION. When using the model, you should insert the appropriate information as replacement for the phrases that are set off by bold print, capital letters, underlining, and parentheses. For example, where the model order says, "multiply (ONE-HALF or OTHER FRACTIONAL MARITAL PROPERTY INTEREST) by a fraction," you should replace the phrase between the parentheses with the appropriate fractional marital property interest. Thus, your order should read "multiply one-half by a fraction" or "multiply one-fourth by a fraction," etc., depending on what the court requires. As another example, where the model order says "(DATE OF DIVORCE)," you should insert "April 2, 1982" or whatever the appropriate date is. A date earlier than the date of divorce, such as the date of separation, may be used if it is used clearly and consistently throughout the order.

Also, where the model gives you instructions in brackets, such as "[Use either A or B as the numerator], " remove those instructional phrases from the order when you retype it so that they will not create confusion about what the court is requiring or

ordering. Where there is a choice of alternatives, choose one alternative; do not list all of the alternatives. Please check your order carefully before you submit it to MainePERS or the court.

APPLICABLE LAW. The QDRO statute applicable to MainePERS is 5 MRSA 17059. Attorneys should note that the QDRO provisions of the federal Retirement Equity Act are not applicable to MainePERS because MainePERS is a governmental plan. Thus, the QDRO requirements of Section 414(p) of the Internal Revenue Code are not applicable, with the exception of Section 414(p)(11).

APPLICABLE MainePERS RULES. The MainePERS Board of Trustees has adopted QDRO rules to supplement the QDRO statute. This rule is Chapter 103 (94-411 CMR 103) of the rules of the Board of Trustees of the Maine Public Employees Retirement System.

PLAN FEATURES. The MainePERS plan is a defined benefits plan that has been established by state law for public employees in Maine. Please refer to Part 20 of Title 5, Maine Revised Statutes Annotated, for the provisions of the plan. These statutes are supplemented by MainePERS rules. These laws and rules describe retirement benefits and other benefits available and the conditions under which a MainePERS member or retiree or beneficiary is eligible to receive them.

Note that for an order to be qualified, you must clearly indicate that the order applies to the Maine Public Employees Retirement System. You are not required to identify the employer (for example, State of Maine or City of Portland). It sometimes will cause confusion if you describe the MainePERS benefits as "arising from the member's or retiree's employment at the Portland School Department" or use similar wording because the MainePERS benefits may result from employment with more than one employer. It is preferable simply to identify the plan (MainePERS) and to omit any references to the employer.

WHAT TO SEND WHERE. MainePERS does not need to receive a copy of the decree of divorce if this order is prepared as a separate order and if the decree does not contain any provisions concerning MainePERS benefits. If the divorce decree or another separate order has provisions for the withholding of wages for child support, the party who is to receive the support payments should arrange for that document to be sent to the employer, such as the school district, in the manner required by law. Please do not send child support orders to MainePERS unless they apply to MainePERS (for example, when MainePERS is the actual employer or when the MainePERS member has retired and the withholding order applies to that person's retirement payments). Likewise, do not send the domestic relations order dividing MainePERS benefits to the employer with the expectation that the employer will forward it to MainePERS. The employer may fail to do so, and MainePERS will never know that the benefits for a member or retiree have been divided. Discuss these matters with your attorney to make sure that the right documents go to the right place. The address for MainePERS is given on page 2 of this Explanation.

UNUSUAL SITUATIONS. This model does not attempt to cover every situation to which the QDRO statute may apply. It is based on the most common situation in which MainePERS benefits will be divided by a court; i.e., a divorce in which a portion of the benefits will be awarded to the spouse of a MainePERS member or retiree. For example, Paragraph No. 1 on page 1 of the model assumes that the "alternate payee" is the spouse or former spouse of the member or retiree. However, under the definition of some terms in the QDRO statute, such as "alternate payee" or "domestic relations order," the statute may apply to other kinds of domestic relations proceedings in which there has been a division of benefits payable by MainePERS and one or both parties wish to have MainePERS make direct payment to a non-member or retiree. Attorneys using the QDRO statute and this model for situations other than determining the marital property rights of a spouse or former spouse in a divorce situation should modify the language in this model as necessary.

BENEFITS DIVISIBLE. The model order awards the alternate payee a portion of each kind of benefit or payment that might be made by MainePERS. See, Paragraph No. 5, beginning on page 2 of the order. For example, if the member withdraws his or her MainePERS account instead of retiring, the alternate payee would receive a portion of the withdrawn amount, not a portion of a retirement benefit. If the member dies before retirement, the alternate payee would receive a portion of the death benefits. Though this model contains language awarding the alternate payee a portion of each kind of benefit or payment, there is no MainePERS requirement that each kind of benefit be subject to division. However, if the parties or the court decides to exempt certain kinds of benefits from division, the language of this model should be modified to clarify exactly which benefits are not to be divided.

Under Paragraph No. 5, the alternate payee is awarded a portion of service retirement benefits (5 MRSA 17851 et seq. and 18451 et seq.) or disability retirement benefits (5 MRSA 17901 et seq., 17921 et seq., 18501 et seq. and 18521 et seq. Participating Local Districts which have not adopted the so-called "new disability law", Article 3 or 3-A, are under the provisions of 1122 as in effect before being amended by PL 1975, c. 622), if, as, and when such benefits are paid to the retiree. The alternate payee does not begin to receive payment until the retiree does, even if the member is eligible to retire but has not retired. If the retiree receives a service retirement benefit, the alternate payee will receive an amount that is the actuarial equivalent of the alternate payee's interest in the form of an annuity payable in equal monthly installments for the life of the alternate payee. (See Chapter 103, 15 MainePERS rules.) Under Paragraph No. 5, the alternate payee also is awarded a portion of any death or survivor benefits, (5 MRSA 17951 et seq., 18001 et seq., 18551 et seq. and 18601 et seq.), if, as, and when payable. In cases in which the beneficiary may choose the form of payment of the benefit (for example, lump sum or monthly annuity), the form of payment to the alternate payee will depend on the choice made by the beneficiary. Payment will be made to the alternate payee in the form of a portion of the payment or payments that are made to the beneficiary.

Under Paragraph No. 5, the alternate payee is awarded a portion of any withdrawn accumulated contributions (5 MRSA 17705 and 18306). A refund of these

contributions is not payable until the member terminates service and applies to withdraw his or her accumulated contributions, except in the case of a member covered by Social Security as an employee of a participating local district who is permitted to cease being a member of the System and withdraw accumulated contribution without termination employment. (Note that a member may terminate service but choose not to withdraw his or her account.) Payment to the alternate payee of a portion of a refund eliminates the right of the alternate payee to payment of a portion of any other benefits or amounts that may become payable in the future if the former member later resumes membership in MainePERS. For example, if a member with \$10,000 in accumulated contributions terminates service and withdraws the member's accumulated contributions, MainePERS will review the court order to determine the portion to be paid to the alternate payee. MainePERS will divide the \$10,000 as the order requires (for example, \$6,500 to member and \$3,500 to the alternate payee). If the former member is reemployed in a position covered by MainePERS and becomes a member of MainePERS again, the alternate payee will not receive any portion of future retirement benefits, death benefits, or any other amount that may be paid by MainePERS. Even if the member re-purchases service credit for the years of service during the marriage, the former spouse will not receive any portion of benefits resulting from the re-established service credit.

Finally, under Paragraph No. 5, the alternate payee is awarded a portion of a special refund. A special refund is one made in circumstances other than a termination of service and application for a refund for the entire amount of accumulated contributions in a member's account. For example, contributions on payments made to members which do not fall within the definition of "earnable compensation" would be refunded whenever that the MainePERS ascertains that such payments have been made and that contributions were deducted.

Under the provisions of the model order, if the special refund consists of contributions made during the marriage (or other time period as indicated in the order), it will be divided. If it consists of contributions made earlier or later, the special refund will not be divided.

NO IMMEDIATE PAYMENT OR SEGREGATION. MainePERS emphasizes that Paragraph No. 5 does not entitle either the MainePERS member or retiree or the alternate payee to withdraw any part of a MainePERS account immediately after the divorce. Also, Paragraph No. 5 does not allow an amount awarded to the alternate payee to be segregated into a separate account for the alternate payee. The System's governing laws and rules have no provision to allow segregation such as that, even if the alternate payee is also a MainePERS member. Further, except when the member or retiree receives a service retirement benefit, Paragraph No. 5 does not provide for the calculation of a separate life annuity for the alternate payee. It provides for the alternate payee to receive a portion of any other payments being made to the MainePERS member or retiree or beneficiary. When those payments cease, the alternate payee's payments will also cease. Therefore, except in the case of service retirement benefits, the alternate payee will receive his or her portion in the same form as the MainePERS member or retiree or beneficiary receives payment (i.e., lump sum, monthly payment, etc.).

FORMULA FOR DIVISION. Paragraph No. 5 sets forth the formula that will be used to determine the portion to be paid to the alternate payee from each distribution made by MainePERS to the MainePERS member or retiree or beneficiary, with the exception of a distribution of a special refund. (The division of a special refund is made according to the manner specified in the last paragraph of Paragraph No. 5.) Parties should review this formula carefully to understand how it will work. The formula has three basic parts.

First, the court must determine how much of the marital property interest will be awarded to each party. The most common award is one-half to each, but the court has the authority to decide on a different division. The court has the discretion to award more of the marital property interest to one party than to the other, including the discretion to award the alternate payee one hundred percent of the marital property interest. It is not the role of MainePERS to advise the parties or the court on what is an equitable division. However, MainePERS cautions that an award of one hundred percent of the marital property interest to the alternate payee may cause the order to be unacceptable as a qualified domestic relations order for several reasons. For example,

even if the alternate payee were eligible to be paid the entire amount of a retirement benefit, by law it still is the MainePERS member who must apply for retirement, select a retirement payment option, and designate a beneficiary. Further, if no payments were being made to the retiree, it would be unlikely that MainePERS would be notified of the death of the retiree. Notification is necessary for MainePERS to terminate or modify benefit payments in accordance with MainePERS laws and rules.

Some attorneys have suggested that a power of attorney authorizing the alternate payee to apply for benefits and select the form of payment would cure the administrative problems. However, powers of attorney are revocable and do not abrogate the member's or beneficiary's right to make benefit decisions, which decisions may contradict the alternate payee's decisions. Further, they do not solve the problem of likely lack of notification of the death of the retiree or beneficiary, upon whose life the benefit payments may be conditioned. Also, a power of attorney from the member or retiree will not empower the alternate payee to act on behalf of the beneficiary. A separate power of attorney would be needed from the person or persons named as beneficiaries to allow the alternate payee to make application for benefits that otherwise would be payable to the designated beneficiaries.

Problems such as these will arise if the court awards one hundred percent of the marital property interest in MainePERS benefits to the alternate payee. Although the QDRO statute requires MainePERS to make direct payment to an alternate payee if the criteria of the law and rules are met, the statute does not require MainePERS to treat the alternate payee as the member or retiree even if the order awards one hundred percent of the benefits to that person. Notwithstanding the QDRO statute, MainePERS still is required to follow its other laws and rules as written (i.e., the member must apply for retirement, the beneficiary must select the payment plan for death benefits, etc.). As a practical matter, such requirements mean that the alternate payee must rely upon the member or retiree and beneficiary to act, though they would have no incentive to do so since they will receive no part of the benefits.

If MainePERS receives an order that awards one hundred percent of benefits to the alternate payee, MainePERS will review it carefully to determine whether the parties or court has addressed some of the practical problems in a manner consistent with the

QDRO statute and the other laws and rules governing MainePERS. Acceptance of any such order as a QDRO may be conditioned on an acknowledgment by the alternate payee that he or she is not entitled to make benefit decisions, and any payment to alternate payee pursuant to the order may be conditioned upon adequate regular proof from the alternate payee that the retiree or beneficiary is still living. Parties are advised to consider the potentially on-going problems that could result from such an award before agreeing upon it or asking the court to order it. The main point to consider is that although a QDRO may require direct payment to the alternate payee if, as, and when benefits become payable, a QDRO does not give the alternate payee the right to determine when those benefits become payable, the right to determine the form they will take, or any other similar rights.

Second, the court will determine the extent of the marital property interest. This means that the order must describe what part of the MainePERS benefits are attributable to service, salary, and/or contributions during the marriage. In the case of retirement benefits, courts commonly identify the marital property interest through a ratio. The ratio sometimes is based on years of creditable service during the marriage compared to total years of creditable service or on accumulated contributions during the marriage compared to total accumulated contributions. In the model order, the numerator of the ratio is the amount of the benefits (expressed in terms of a full benefits service retirement benefit at normal retirement age) based only on service and salary during the marriage, while the denominator is the amount of the benefits (also expressed in terms of a full benefits service retirement benefit at normal retirement age) based on total service and salary at the time a distribution becomes due. The ratio is used to establish the correct portion (i.e., the marital property portion) of the total benefit payable that may be divided between the parties.

Though the "full benefits service retirement benefit" ratio is based on two calculations of a full benefits service retirement benefit at normal retirement age (one for the numerator and one for the denominator), the ratio itself can be applied to any kind of distribution of benefits by MainePERS. The full benefits service retirement benefit calculations simply provide the numerator and denominator for the ratio that establishes

the marital property portion of the benefit, regardless of the nature or form of the benefit payment that is eventually made.

When using this ratio, you must choose the appropriate numerator: Numerator A, if the member is not retired as of the date of the divorce, or Numerator B, if the retiree is retired as of the date of the divorce. To make the correct choice, you will need to know whether the member or retiree is retired as of the date of the divorce. The effective date of a member's service retirement is the first day of the month following the month in which the member terminates employment, or in the case of an inactive vested member, applies for retirement. See 5 MRSA 17804 and 18404. MainePERS usually can confirm retirement status in response to a proper written request for such information, as explained below.

The following is an example of how Numerator A would be calculated for a member not yet retired as of the date of the divorce. Assume that the member, Mr. Jones, was married on August 1, 1983. He then became a member of MainePERS as a public school teacher in September, 1985. He had accrued five years of creditable service when he was divorced on June 3, 1990, and continued to teach the following school year. If the order used August 1, 1983, as the date of the marriage and June 3, 1990, as the date of divorce, MainePERS would calculate a full benefits service retirement benefit at normal retirement age using the service and compensation between those dates and based on the law in effect at the date of divorce. By reviewing the member's records, MainePERS would determine that he had five years of creditable service during the period and that his highest three years of compensation were \$23,000 in the 1987-1988 school year, \$24,000 in 1988-1989, and \$25,000 in 1989-1990. The law in effect in June, 1990, required a full benefits service retirement benefit at normal retirement age to be based on the following formula:

2% X years of creditable service X average of highest three years compensation

Using this formula, MainePERS calculates the following full benefits service retirement benefit at normal retirement age for Mr. Jones using only service and compensation during the period specified (i.e., the period of the marriage):

$$2\% \times 5 \text{ years} \times \$24,000 = \$2,400 \text{ per year}$$

This benefit may be expressed as a monthly benefit by dividing it by 12:

$$\$2,400 / 12 \text{ months} = \$200 \text{ per month.}$$

Thus, by using the period of the marriage described in the order, MainePERS will be able to calculate a full benefits service retirement benefit at normal retirement age to use as a numerator in the ratio.

The process is similar if the member or retiree is retired as of the date of the divorce and Numerator B is used. The following is an example. Assume that Ms. Smith was single when she began teaching in September, 1960. She married on July 10, 1965. She continued teaching and retired with an effective retirement date of May 30, 1990. She was divorced September 15, 1990. Although she had a total of thirty years of creditable service at the time of retirement, only 25 years of creditable service were during the marriage. Her highest three years compensation average at retirement was \$33,000. Under the laws and rules in effect at the time of her retirement (May 30, 1990), the full benefits service retirement benefit at normal retirement age formula specified the following calculation:

$$2\% \times \text{years of creditable service} \times \text{average of highest three years compensation}$$

Using service and compensation during the marriage, the formula results in the following numerator:

$$2\% \times 25 \text{ years} \times \$33,000 = \$16,500 \text{ per year}$$

This benefit may be expressed as a monthly benefit by dividing it by 12:

$$\$16,500 / 12 \text{ months} = \$1,375 \text{ per month}$$

The description of Numerator B results in a numerator of \$16,500 per year or \$1,375 per month.

Note that it is not necessary to insert a dollar amount as the numerator in the formula. By inserting specific dates, you will provide sufficient information for MainePERS to calculate the numerator and maintain it as part of the member's file. While you can obtain a copy of the calculation from MainePERS after you have submitted the order to MainePERS, it is not necessary to include the dollar amount of the numerator as part of the formula in the order before the court signs it.

The denominator of the ratio is to be calculated in a similar manner. However, the denominator will be calculated as of the latest effective date of retirement (or other date, as specified in the order). If there is a distribution prior to and in the alternative to retirement, the denominator is calculated as of the date of distribution.

Using the example of Mr. Jones from above, you can see that because Mr. Jones is not retired on the date of the divorce, MainePERS will not be able to calculate a denominator at that time. However, the description in the model will permit MainePERS to make the necessary calculation at the time of any distribution, including retirement. For example, if Mr. Jones continues to work for five years after his divorce, then terminates service, and applies for a refund, MainePERS will review his file when the refund application is received to determine what the denominator should be. The number will depend on his compensation average at the time of termination, the total number of years of creditable service, and the full benefits service retirement benefit at normal retirement age in effect at the time of the distribution. MainePERS cannot predict the denominator but rather must wait until the time of the distribution to perform a precise calculation.

In the case of Ms. Smith, MainePERS can calculate the denominator as of the date of retirement because Ms. Smith retired prior to the date of the divorce. Using the full amount of creditable service (not just creditable service during the marriage), the highest three years compensation, and the benefit formula established by the laws and rules in effect at the time of retirement, MainePERS would calculate the denominator as follows:

$$2\% \times 30 \text{ years} \times \$33,000 = \$19,800 \text{ per year}$$

The annual annuity is equivalent to \$1,650 per month.

In summary, for Mr. Jones, the marital property interest in any MainePERS benefits payable is \$200 per month divided by Y, where Y is the monthly full benefits service retirement benefit at normal retirement age calculated as specified in the model at the time of retirement or other distribution. For Ms. Smith, the marital property interest in any MainePERS benefits payable is \$1,375 per month divided by \$1,650 per month, or 83 percent. Thus, 83 percent of any benefit will be divided between the parties according to the interest awarded to each (one-half, etc.). The remaining 17 percent of any benefit would not be divided; it would be paid entirely to Ms. Smith or her beneficiary.

The third part of the formula is the amount of the distribution being made by MainePERS. Again, unless the benefit payable to the MainePERS member or retiree or beneficiary is in pay status when the order is entered, neither the parties nor MainePERS can know what the dollar amount of this element will be in the future when benefits become payable. Also, because the fractions in the first and second parts of the formula are applied to the benefit payments if, as, and when made, the amount of the distribution is subject to change as benefits are increased or decreased. For example, for Ms. Smith, who we will assume selected a full benefits service retirement benefit upon retirement, the formula is as follows when the order is entered:

$$\frac{1}{2} \times \frac{\$1,375}{\$1,650} \times \$1,650 \text{ per month} = \$687.50 \text{ per month to alternate payee}$$

If the distribution is part of a service retirement benefit, see "LIFE ANNUITY" below.

Any future benefit increases that are provided by statute or that are provided by acts of the Legislature will be paid to the retiree or beneficiary and the alternate payee in the same proportion that the benefit is divided. The present statutes provide for cost

of living adjustments (COLA) to retired state employees, teachers and employees of participating local districts that have elected COLA as part of their plans, each September. If the retiree receives a COLA the alternate payee is entitled to the same percentage adjustment.

Note that the third element of the formula may consist of any type of benefit or amount payable by MainePERS. For example, in Mr. Jones' case, the third element of the formula would consist of the amount of his refund. For example, the formula could be as follows:

$$1/2 \times \frac{\$200}{\$500} \times \$14,500 = \$2,900 \text{ to alternate payee}$$

In this example, \$200 per month is the full benefits service retirement benefit at normal retirement age based on service credit and compensation during the marriage, \$500 per month is the full benefits service retirement benefit at normal retirement age based on total service credit and salary at the time of the distribution (i.e., at the time of the refund), and \$14,500 is the amount of the refund.

In summary, the full benefits service retirement benefit at normal retirement age formula can be used regardless of the nature of the benefit being paid. Each benefit or amount payable by MainePERS will be divided between the member or retiree or beneficiary and the alternate payee according to the terms of the formula, unless parties or the court specifically excludes a particular kind of benefit from division.

Finally, the last paragraph of Paragraph No. 5 of the model order divides special refunds in a manner different from other distributions. The formula described above is not applicable to special refunds. See the explanation on special refunds and how they are to be divided under "BENEFITS DIVISIBLE" above.

LIFE ANNUITY. Section 15 of Board of Trustees rule #103 provides that when the alternate payee's interest is distributed as a portion of a service retirement benefit, the System will pay the alternate payee an amount that is the actuarial equivalent of that interest in the form of an annuity payable in equal monthly installments for the life of the

alternate payee. The System will determine the single life annuity value of the benefit payable to the member or retiree; i.e., the present value of a full benefits service retirement benefit, as of the date retirement benefits are first payable to the retiree or the date payment to the alternate payee is scheduled to begin, whichever is later. This amount will be multiplied by the percentage determined by the formula (one/half of 83% in Ms. Smith's case) to find the amount upon which the alternate payee's life annuity will be based. The retiree's benefit will be reduced by an amount equivalent to the value of the benefit being paid to the alternate payee.

DIVISION OF BENEFICIARY'S PAYMENTS. Paragraph No. 6(f) addresses the matter of designation of the beneficiary who is to receive any benefits or amounts payable by MainePERS upon the death of the MainePERS member or retiree. Under the QDRO law and applicable MainePERS rule, MainePERS will not accept an order as a qualified order if it requires the MainePERS member or retiree to designate a certain person (such as the former spouse) as the beneficiary. (5 MRSA 17059, sub-5, B and Chapter 103, 9, C, sub-1 MainePERS rules). However, under the model order, an alternate payee will receive a portion of any benefits paid to the beneficiary.

Please note two points about divorce and beneficiaries under the System's governing laws and rules. First, if a MainePERS member; i.e., a person not yet retired, has designated the member's spouse as beneficiary but wants to remove that person's name after a divorce, the MainePERS member must complete a new designation of beneficiary form and return it to MainePERS. The divorce does not automatically remove the spouse's name as the designated beneficiary. A new form must be completed, even if all MainePERS benefits are awarded to the member or retiree. If the member dies without having changed the beneficiary designation, MainePERS will pay all benefits to the former spouse, if that person is the last designated beneficiary, even if the member has subsequently re-married.

Second, 5 MRSA 17805-A and 18405-A provide for that a retiree may name a different beneficiary under options 2, 3 or 4 after a divorce. The original spouse must have been the sole beneficiary and must agree to the change of beneficiary. In addition, the original spouse must sign a statement acknowledging that he or she has

received and understood counseling by a member of the MainePERS staff relating to the financial effects of giving up rights to the benefit. The change of beneficiary will result in a reduction in the amount of the benefit paid to the retiree and new beneficiary's benefit will be less than the benefit of the original spouse. The statutes do not require that the new beneficiary be the retiree's spouse. A retiree who has elected Option 1 may change the designated beneficiary at any time.

Paragraph No. 6(f) recognizes the fact that in some instances, the alternate payee will be the sole designated beneficiary for some or all benefits payable upon the death of a MainePERS member or retiree. If so, the alternate payee will receive the payment to which he or she is entitled as beneficiary. For example, if the alternate payee is the designated beneficiary under Option 2, the alternate payee will receive the entire amount of the Option 2 benefit.

If, however, the alternate payee is a joint beneficiary for a benefit, he or she will receive the greater of the fractional amount of that benefit awarded under Paragraph No. 5 or the amount of the benefit to which the person is entitled as joint beneficiary, but not both the fractional amount and the amount payable to the alternate payee. For example, assume that the alternate payee is awarded what amounts to 25 percent of any benefit payable (e.g., $1/2 \times [\$200 / \$400] \times \text{benefit}$). Assume, also, that the alternate payee and the retiree's sister are joint beneficiaries for the service retirement benefits under an Option 4. Upon the death of the retiree, the alternate payee would receive the Option 4 benefit, provided that it is greater than the benefit being received as alternate payee before the retiree's death. If the option 4 benefit is not greater, there would be no change in the amount of the alternate payee's monthly check. In the case of the death of an active member who has designated the alternate payee and another person to be joint beneficiaries, the beneficiaries would make an election from among the applicable death benefits and if one/half of that benefit is determined to be greater than the alternate payee benefit, that benefit would be paid rather than the alternate payee benefit.

BENEFIT INCREASES OR DECREASES. Paragraph No. 6(g) on pages 6-7 of the model order explicitly awards the alternate payee a proportionate share of any

post-distribution benefit increases or decreases. This is required by Chapter 103, 9, sub-E, MainePERS rules.

The formula described in Paragraph No. 5 attempts to eliminate the effect that salary increases and additional years of service credit after the divorce could have on the amount awarded to the alternate payee. By basing part of the formula defining the alternate payee's interest on a computation of a full benefits service retirement benefit as of normal retirement age using compensation and service credit only as of the date of divorce, MainePERS has sought to insure that the separate property of the member or retiree is not invaded. However, by including the provision in Paragraph No. 6 (g), the model does divide post-divorce benefit increases by apportioning the total increase between the parties. The apportionment is usually appropriate because, for example, a percentage increase granted by current statutes (5 MRSA 17806 and 18407) applies to the whole amount of the benefit, not just to the amount of the benefit attributable to the service and salary before or after the marriage.

NO LUMP SUM. The QDRO law states that the Board of Trustees of the System may, by rule, provide for paying an alternate payee, in lieu of the interest awarded by a QDRO, a lump sum amount that is the equivalent of that interest. However, the MainePERS Board to date has not adopted rules to provide for such payment. Therefore, MainePERS will not accept an order as a qualified order if it requires MainePERS to make a lump sum payment to the alternate payee. This provision, however, allows MainePERS to make payment in a lump sum if the Board adopts such rules in the future.

TERMINABLE INTEREST. Paragraph No. 6(i) of the model order states that the interest of the alternate payee is governed by 5 MRSA 17061. This law currently provides that the death of an alternate payee shall terminate the interest of the alternate payee in the MainePERS. This means that when an alternate payee dies, no additional amounts will be paid to the alternate payee's estate, even if the MainePERS member or retiree or beneficiary will receive (or continue to receive) payments from MainePERS in

the future and even if the alternate payee died before ever beginning to receive any payments.

ERRONEOUS PAYMENTS. Paragraphs 7 and 8 of the model order require any recipient of any amount which under a QDRO should have been paid to another person to immediately transmit such amount to the person to whom the amount should have been paid. Paragraphs 7 and 8 also require that the MainePERS be advised, or the recipient may return such amount to the System for transmittal to the person to whom the amount should have been paid. It is very important that the System be advised, or have the money returned to it, so that the tax liability is allocated to the proper person.

REPORTING TO IRS. If MainePERS makes separate payments under a QDRO to the MainePERS member or retiree and alternate payee, it will report those payments to the Internal Revenue Service separately for each party. Amounts paid by MainePERS to both the member or retiree (or a beneficiary) and to the alternate payee generally are taxable. Certain portions of payments may be non-taxable to the extent allowed by the Internal Revenue Code. MainePERS provides general information on the taxability of benefits when any payment begins, as well as information on the portion which may be non-taxable. When a portion of benefits or payments is being paid to an alternate payee, under the Internal Revenue Code the alternate payee may take advantage of a proportionate part of the non-taxability. Both the member or retiree and the alternate payee should consult their tax advisors to determine the proper allocation of any non-taxable portion of benefits and the taxability of amounts received.

You may wish to discuss IRS Publication 575 and the following sections of the Internal Revenue Code with your tax advisor: 72(m)(10) (allocation of investment in contract between alternate payee and member or retiree); 402(a)(6)(f) (rollovers); 402(a)(9) (alternate payee as "distributee" subject to tax); and, 414(p)(11) (tax treatment of distributions from governmental a plan pursuant to a QDRO, though provisions of 414(p) are generally inapplicable to governmental plans). Also, both parties should discuss with their tax advisors any penalty for any early withdrawal of funds, such as a refund, and to whom the IRS will assess that penalty. Advice should be sought

particularly if parties are contemplating an award of all of the account to the alternate payee. While MainePERS will attempt to provide information that will assist each party in determining his or her tax liability on payments received from MainePERS, the System cannot give tax advice and it ultimately is the responsibility of each payee to be sure that taxable payments are correctly reported on his or her tax return.

REQUESTS FOR ACCOUNT INFORMATION. When a MainePERS member or retiree is involved in a divorce proceeding, MainePERS usually is asked by one or both parties to provide information on the "value" or "present value" of the account of a member or on the "value" of a retiree's benefits. The determination of the "value" of an account or benefits is a subjective process based on several assumptions. For this reason, if you wish to obtain a valuation, you must consult with a private actuary or other expert witness who can provide advice or testimony on this matter. You should discuss with your attorney the need for and cost of such expert assistance. MainePERS cannot provide a determination of the "value" or "present value" of an account or benefits, nor is such a determination needed for the model QDRO.

MainePERS can provide you with specific, objective information such as an account balance or a retirement estimate based on current service credit and salary. MainePERS will not provide estimates based on projected or assumed service credit and salary changes. If you wish to calculate such estimates, you may do so yourself by using the basic full benefits service retirement benefits formula (2 percent X years of service X average of highest three years' compensation = annual full benefits service retirement at normal retirement age).

MainePERS also is frequently asked whether a member's accumulated contributions balance includes the state's contribution. It does not, and MainePERS cannot provide information on the state's contribution with respect to an individual member. A MainePERS member is not entitled to withdraw or otherwise receive a lump sum payment of state contributions. For this reason, MainePERS does not maintain a ledger in the member's file showing the state's contributions. The accumulated contributions balance that MainePERS can provide shows only the member's contributions and any credited interest.

State contributions are used to fund a member's or retiree's retirement and death benefits. The amount of the benefits, however, is "defined" by statute; it is not determined by the total amounts that the member and state have contributed. Therefore, there is not a dollar for dollar correlation between the total amount of contributions (state and member) and the total benefits that might be paid, though both the state and member contributions help to fund those benefits.

If you are using the model order to divide benefits, you need not obtain any retirement estimates or account information to complete the order. Because the model relies on descriptions of calculations rather than the exact calculations themselves, you can complete the model by inserting relevant dates rather than specific dollar amounts.

If you wish to have MainePERS estimate the dollar amounts that will ultimately be used in the calculations called for in the order when benefits are to be divided, please remember that MainePERS will not use projected or assumed salaries and service credit. The estimates that MainePERS could provide for the numerator, denominator, and benefit payable would be based only on service credit and salaries as of the date you request the estimates. Once again, if you wish to project benefits using assumptions of additional service credit and future salary increases, you may do so yourself using the full benefits service retirement benefits at normal retirement age formula given above. Also, remember that any retirement estimates provided by MainePERS are subject to change at time of retirement, when MainePERS verifies and adjusts as necessary the service credit and reported salaries.

The spouse or former spouse of a MainePERS member or retiree is allowed by 5 MRSA 17059, sub-12 and Chapter 103, 2, MainePERS rules, to obtain information on the member's or retiree's account or benefits that is relevant to the spouse's interest in the member's or retiree's account or benefits. The spouse or the spouse's attorney must submit a written request identifying the member or retiree by name and social security number, relationship to the member or retiree and the date of the marriage. If the attorney is submitting the request, he or she also must include a statement of representation. The request should identify the period of time the spouse is interested in (for example, "from the date of the marriage June 4, 1975, through the date of separation July 17, 1990"). There is no need to have a subpoena issued in order to

obtain the information. The statute and rule require that the System provide the spouse or former spouse with the same information that would be provided to the member or retiree on the member's or retiree's account or benefits which is relevant to the spouse's or former spouse's interest in the member's or retiree's account or benefits.

If you are the member or retiree and need information, you should submit a written request with your name, social security number, what information you are requesting, the period of time you are interested in, the address to which the information should be mailed, and your signature. If a new address is given, indicate whether it is a permanent change of address that MainePERS may use for all future mailings of newsletters, annual account balances, and similar information. If your attorney is sending the request, he or she should include a statement of representation in lieu of your signature. If you have indicated a permanent change of address, MainePERS asks that you sign the request yourself rather than having your attorney do so.

Please discuss the need for information from MainePERS with your attorney very early. You should submit a request for information at least four weeks before the information will be needed for trial or settlement.

CONCLUSION. MainePERS hopes that these comments will help you and your attorney better understand the model order and the System's governing laws, rules and procedures. However, this explanation provides general information only. Questions regarding specific problems should be directed to the MainePERS, at the address on page 2 of the Explanation.