

IN THE FAMILY COURT OF _____ COUNTY
STATE OF WEST VIRGINIA

_____,
Petitioner
v. Civil Action No.: _____
_____,
Respondent

QUALIFIED DOMESTIC RELATIONS ORDER

This Order is intended to be a Qualified Domestic Relations Order under applicable state and/or federal law, for entry on or after September 1, 2005. It is hereby ORDERED that:

- (1) The plan to which this Order applies is the **State Public Employees Retirement System** (the "Plan"), as established and set forth in *W. Va. Code 5-10-1 et. seq.*, as the same may be amended from time to time.
- (2) The date of marriage of the parties was _____. The date of separation of the parties was _____. The date of divorce of the parties was _____.
- (3) The Petitioner is referred to herein as the _____ [insert "Participant" or "Alternate Payee", as appropriate], and the Respondent is referred to herein as the _____ [insert "Participant" or "Alternate Payee", as appropriate].
- (4) The name, last-known mailing address, birth date and Social Security number of the Participant is:

Date of Birth: _____; Social Security No.: _____

- (5) The name, last-known mailing address, birth date and Social Security number of the Alternate Payee is:

Date of Birth: _____; Social Security No.: _____

- (6) Retirement benefits for the Alternate Payee pursuant to this Order shall be calculated as of _____ [enter date of separation or date of divorce, as agreed to by the parties or determined by the Court] (the “QDRO Determination Date”). However, payment of any benefits awarded to the Alternate Payee pursuant to this Order shall only commence at such time as benefit payout to the Participant commences, whether as a result of retirement, death or withdrawal from service for any other reason.
- (7) The Participant’s retirement benefits shall be divided between the Participant and Alternate Payee on the QDRO Determination Date as follows:
- (a) The marital property portion of the Participant’s retirement benefits subject to division in this Order shall be determined as follows: The Participant’s Vested Accrued Retirement Benefit (“VARB”), less all benefits due to Exempt Service, shall be multiplied by a fraction, the numerator of which shall be the number of months of the Participant’s contributing service from the parties’ date of marriage through the QDRO Determination Date, and the denominator of which shall be the total number of months of the Participant’s contributing service through the QDRO Determination Date (including contributing service, if any, prior to the marriage of the parties).
 - (b) The Participant’s VARB is the benefit due the Participant as of the QDRO Determination Date. If, at the time benefit payout commences, the Participant elects a benefit in the form of an annuity, then the VARB shall be the annuitized benefit which would have been available to the Participant as of the QDRO Determination Date, calculated without regard to any minimum years of service requirement and in the same form elected by the Participant at payout. (The Alternate Payee is not to be treated as the surviving spouse of the Participant for purposes of calculating benefits payable to the Participant or Alternate Payee hereunder.) If, at the time benefit payout commences, the Participant elects a return of contributions (plus interest as may be allowed by law), then the VARB shall be the return of contributions (plus interest as may be allowed by law) to which the Participant would have been entitled as of the QDRO Determination Date.
 - (c) Exempt Service is defined as all additional service credit due to non-contributory military service and accumulated sick and/or annual leave, as determined from time to time under applicable West Virginia law.
 - (d) The Alternate Payee shall be entitled to _____ [insert $\frac{1}{2}$ or such other fraction or percentage as the Court ordered or upon which the parties have agreed. If left blank, the Consolidated Public Retirement Board shall use the fraction $\frac{1}{2}$] of the marital property portion of the Participant’s VARB as determined in paragraph 7(a), above, payable at the same time and in the same manner (either in the annuity form or, if allowed, in a lump sum) as paid to the Participant or, if a joint and survivor or other optional form of annuity is elected by the Participant, at the same time as paid to the

Participant and the Participant's beneficiary. Provided, however, that nothing in this Order shall be construed as granting the Alternate Payee any election rights with respect to the form of benefit; rather, the form of benefit at time of payment shall be elected by the Participant.

(e) The retirement benefits otherwise due to the Participant under the Plan shall be reduced by the benefits to be paid to the Alternate Payee as determined in paragraph 7(d), above.

- (8) The Alternate Payee hereby acknowledges that he or she has no right to designate a beneficiary to receive payments after his or her death. Therefore, if the Participant elects to be paid retirement benefits in the form of an annuity, the annuity payable to the Alternate Payee shall continue until the earlier of (a) the Alternate Payee's death or (b) the cessation of the payment of the Participant's annuity, including survivor payments under a joint and survivor or other optional form of annuity.
- (9) Subject to the provisions of Paragraph (8), both the Participant and the Alternate Payee shall be entitled to such additional or supplemental benefits or cost of living adjustments as may become effective after the Participant enters pay status, proportionate to their respective portions of the total benefit payable immediately prior to such adjustment.
- (10) Both the Participant and the Alternate Payee acknowledge that they may each be subject to tax on distributions they receive pursuant to this Order, regardless of any agreements or understandings between them, and further acknowledge that any investment in the contract related to the Participant's retirement benefits shall be apportioned between them in accordance with applicable federal income tax laws in effect at the time payments commence. Both the Participant and the Alternate Payee agree to consult their own tax advisors with respect to this issue.
- (11) Both the Participant and the Alternate Payee shall notify the QDRO Manager of the Consolidated Public Retirement Board of any change in address, as set forth in paragraphs (4) or (5) above.
- (12) Nothing contained in this Order shall be construed to require the Plan or Plan Administrator:
 - (a) to provide to the Alternate Payee any type or form of benefit or any option not otherwise available to the Participant under the Plan;
 - (b) to provide to the Alternate Payee increased benefits (determined on the basis of actuarial value) not available to the Participant; or
 - (c) to pay any benefits to the Alternate Payee that are required to be paid to another alternate payee under another order determined by the Plan Administrator to be a QDRO before this Order is determined by the Plan Administrator to be a QDRO.
- (13) In the event that the Plan Administrator does not approve the form of this Order, or should it

be subsequently determined that amendment of this Order is necessary to ensure its status as a QDRO, then each party shall cooperate and do all things reasonably necessary to devise a form of Order acceptable to the Plan Administrator consistent with applicable law.

- (14) This Court retains jurisdiction to enforce, revise, modify, or amend this Order insofar as is necessary to establish or maintain its qualification as a QDRO, provided, however, that neither this Order nor any subsequent revision, modification, or amendment shall require the Plan to provide any form or amount of benefit not otherwise provided under the Plan.
- (15) This Order is intended to constitute a QDRO under applicable state and federal law.
- (16) Payments to the Alternate Payee under this order shall be prospective only, and shall commence only after benefits are available to the Participant and following the Board's receipt and acceptance of the entered QDRO.
- (17) Copies of this ORDER shall be furnished to the QDRO Manager of the Consolidated Public Retirement Board, and the QDRO Manager shall notify the Participant and the Alternate Payee of the qualification status (*i.e.*, acceptance or rejection) of this ORDER.

ENTER this _____ day of _____, 20____.

Judge

Presented and Approved for Entry by:

[Insert name, address & phone no. of Participant's counsel]

[Insert name, address & phone no. of Alternate Payee's counsel]