

[SAMPLE EDRO - TO BE USED IN THE EVENT OF DIVORCE  
PRIOR TO RETIREMENT FOR  
MEMBERS OF RETIREMENT PLANS  
5 & 6]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
Plaintiff,

Case No: \_\_\_\_\_

vs.

Hon: \_\_\_\_\_

\_\_\_\_\_  
Defendant.

\_\_\_\_\_  
P

Attorney for Plaintiff  
{ Address }

{ Phone# }

\_\_\_\_\_  
P

Attorney for Defendant  
{ Address }

{ Phone# }

**ELIGIBLE DOMESTIC RELATIONS ORDER**  
**FOR THE WAYNE COUNTY EMPLOYEES' RETIREMENT SYSTEM**

Plan # \_\_\_\_\_

At a session of said court, held in the Courthouse,  
City of \_\_\_\_\_, County of \_\_\_\_\_, State of Michigan

On \_\_\_\_\_

PRESENT: HON. \_\_\_\_\_

CIRCUIT COURT JUDGE

This Order is intended to serve as an Eligible Domestic Relations Order (“EDRO”) by which [Plaintiff/Defendant], \_\_\_\_\_ assigns, a portion of [his/her] retirement benefits, under the Wayne County Employees’ Retirement System, to the [Plaintiff/Defendant], \_\_\_\_\_, in accordance with the Eligible Domestic Relations Order Act (Public Act 46 of 1991 - MCL 38.1701-38.1711) and the Wayne County Employees’ Retirement System. **[It is intended that this Order be incorporated in the Judgment of Divorce entered \_\_\_\_\_, \_\_\_\_, and made a part thereof].**

1. The retirement system (the “Plan”) subject to this Order is as follows:

Wayne County Employees’ Retirement System  
Attn: Director/Deputy Director  
28 W. Adams, Suite 1900  
Detroit, Michigan 48226

Retirement plans 5 and 6 consist of both a defined benefit plan and a defined contribution plan.

**Note: The EDRO Act requires that the Order, to be considered an EDRO, must be entered with the Court and filed with the Plan before the Participant’s retirement allowance effective date.**

2. The Participant is the [Plaintiff/Defendant], \_\_\_\_\_. The Participant’s Social Security information, Date of Birth, and last known address are contained on the attached Exhibit A, which, for privacy protection, shall not be filed with the Court Clerk, but shall be filed with the parties and the Plan Administrator.
3. The Alternate Payee is the [Plaintiff/Defendant], \_\_\_\_\_. The Alternate Payee’s Social Security information, Date of Birth, and last known address are contained on the attached Exhibit A, which, for privacy protection, shall not be filed with the Court Clerk, but shall be filed with the parties and the Plan Administrator.

The Alternate Payee shall have the duty to notify the Plan Administrator in writing of any changes in her mailing address subsequent to the entry of this order at the Plan’s address as stated above.

4. The Participant and the Alternate Payee were married on \_\_\_\_\_, \_\_\_\_, and were **[divorced/legally separated]** on \_\_\_\_\_, \_\_\_\_.
5. The Participant assigns to the Alternate Payee a portion of [his/her] benefits from the Defined Benefit Plan and the Plan will pay benefits to the Alternate Payee according to the following terms and conditions:

- (a) It is the parties’ intention, and the order of this Court, that the Alternate Payee

receive a monthly benefit from the Defined Benefit Plan of

**{SELECT EITHER ALTERNATIVE 1 OR 2}**

**{Alt. 1}** \_\_\_\_\_% of the amount of the Participant's retirement allowance, which has accrued as of \_\_\_\_\_, and which percentage **[does not take/takes]** into consideration the years of service, if any, that were accrued prior to the date of marriage (i.e. the marital portion).

**OR**

**{Alt. 2}** \$\_\_\_\_\_, of the Participant's retirement pension.

The Alternate Payee's benefit **[shall/shall not]** include a pro rata share of any guaranteed lifetime benefit increases and guaranteed additional benefit payments that were a part of the Participant's accrued benefit as of **[Insert date]**, the allocation date. If the Participant acquires no right to a pension from the Plan due to the termination of covered employment before vesting occurs or the death of the Participant before retirement and before the eligibility conditions for a pre-retirement survivor benefit have been satisfied, or for any other reason, the Alternate Payee's rights shall be limited to **[Insert percentage]** of any payment, if any, the Plan makes to, or on behalf of, the Participant that had accrued as of the allocation date.

- (b) Payments to the Alternate Payee will otherwise commence when the Participant begins to receive benefits under the Plan and shall be payable in the form as provided in Paragraph 5(c) below,

**{THIS SENTENCE MAY ALSO INCLUDE ALTERNATIVE 1 OR 2}**

**{Alt. 1}** unless the Alternate Payee elects to receive **[his/her]** benefit in a form which provides an annuity based on **[his/her]** life commencing when the Participant begins to receive benefits under the Plan.

**{Alt. 2}** unless the Alternate Payee elects to receive **[his/her]** benefit in a form which provides an annuity based on **[his/her]** life either commencing when the Participant begins to receive benefits under the Plan or commencing early, pursuant to Paragraph 5(d).

- (c) The benefits payable to the Alternate Payee for that portion of the retirement allowance which is being divided in Paragraph 5(a) will

**{SELECT:}**

**{Alt. 1}** be made during the life of the Alternate Payee and shall end upon the

death of the Alternate Payee. These payments will be actuarially adjusted for the life expectancy of the Alternate Payee.

**OR**

**{Alt. 2}** be made under the Plan's **[Option SL- Straight Life Annuity]** or **[Option 1 –Life Payment to the Retired Member with a Guaranteed Number of Minimum Payments]** or **[Option 2 - 100% Joint and Survivor Benefit]** or **[Option 3 - 50% Joint and Survivor Benefit]** form of benefit. The Participant shall designate the Alternate Payee as **[his/her]** survivor beneficiary. While both parties are alive, the Alternate Payee shall receive that portion of the Participant's retirement allowance as stated in Paragraph 5(a) that is being divided in this order. Upon the death of the Participant, if the Alternate Payee is still alive, the survivor portion of the benefit payments shall continue to be paid to the Alternate Payee as the named beneficiary, **[unless the Participant elected an Option 1 and no payments remain to be paid].**

**(d) {Optional} The Alternate Payee shall have the right to elect to receive benefit payments under the Plan at any time beginning when the Participant reaches the earliest retirement date as defined in Section 2(d) of the EDRO Act. In the event the Alternate Payee elects to commence payment of benefits on or after the Participant's earliest retirement date but prior to the Participant's retirement date, payments to the Alternate Payee in the amount specified in the Order will be made during the life of the Alternate Payee and shall end upon the death of the Alternate Payee. These payments shall be actuarially adjusted for the life expectancy of the Alternate Payee.**

**(e) Unless the Alternate Payee elects to commence payment when the Participant begins to receive benefits under the Plan, payments to the Alternate Payee in the amount specified in the Order will be made during the life of the Alternate Payee and shall end upon the death of the Alternate Payee. These payments shall be actuarially adjusted for the life expectancy of the Alternate Payee.**

6. (a) It is the parties' intention and the order of this Court that the Alternate Payee receive a monthly benefit from the Defined Contribution Plan of

**{SELECT EITHER ALTERNATIVE 1, 2, 3, OR 4}**

**Alternative 1:**

[\_\_\_\_\_] Percent (\_\_\_%) of the Participant's total account balance accumulated under the Plan as of [DIVISION DATE] (or the closest valuation date thereto).

**Alternative 2:**

\_\_\_\_\_ Percent (\_\_\_\_\_% ) of (A) minus (B) where: (A) equals the Participant's total account balance accumulated under the Plan as of [DIVISION DATE], and (B) equals the Participant's total account balance accumulated under the Plan as of [START DATE]

**Alternative 3:**

\_\_\_\_\_ Percent (\_\_\_\_\_% ) of the contributions made to the Plan on behalf of the Participant from [START DATE] to [DIVISION DATE], and any gains and losses attributable to such contributions as of [DIVISION DATE]. Any contributions made prior to [START DATE] or after [DIVISION DATE] shall remain the property of the Participant, as shall any gains and losses on such contributions.

**Alternative 4:**

\$\_\_\_\_\_, as of [DIVISION DATE].

This amount [shall/shall not] be adjusted by any interest and investment earnings (gains and losses) attributable thereto for periods subsequent to [DIVISION DATE], until the date the Alternate Payee's assigned amount is segregated into a separate account for the Alternate Payee. The total account balance to be divided shall include all amounts maintained under all of the various accounts and/or sub accounts established on behalf of the Participant. The Alternate Payee's share of the benefits shall be allocated on a pro rata basis among all of the accounts and/or investment funds maintained on behalf of the Participant under the Plan.

- (b) Payments to the Alternate Payee for that portion of the Participant's retirement allowance which is being divided in Paragraph 6(a) will be made upon the Alternate Payee's commencement of benefits provided in Paragraph 5(a) in the form of a total lump sum distribution to the Alternate Payee or a lump sum direct rollover to another qualified plan to the extent allowed by Federal law in accordance with the Retirement System's rollover procedures.

7. If any of the payment provisions of this Order would require the Plan to provide benefits which would differ in value from the benefits the Plan would have paid had the Divorce or Legal Separation not occurred, as determined on the basis of actuarial equivalent values, due to difference in life expectancies of the Participant or the Alternate Payee, the difference in values shall be eliminated through adjustment to the benefits otherwise

payable to the **[Participant][Alternate Payee][the Participant and the Alternate Payee equally]**.

8. If the Alternate Payee dies before receiving any payment of benefits payable to **[him/her]** under this Order, pursuant to the EDRO Act, the Alternate Payee's interest in the Plan shall revert back to the Participant.

#### **Optional**

- [9. If after the date this Order is determined by the Director or Deputy Director to be an Eligible Domestic Relations Order, the Plan pays any post-retirement lifetime benefit increase or post-retirement additional benefit payment other than guaranteed lifetime benefit increases and guaranteed additional benefit payments described in Paragraph 5(a), such as non-guaranteed lifetime increases, supplemental payments, 13<sup>th</sup> checks, one-time payments, for which the Participant is eligible, or is ineligible solely due to the Participant's death, such special increase or payment shall be allocated between the Participant's benefit and the Alternate Payee's benefit in the same proportion as the amount of that party's retirement benefit.]**

#### **Optional**

- [10. The Participant shall designate the Alternate Payee as the surviving spouse for purposes of the Plan's pre-retirement survivor benefit for the Alternate Payee's percentage, as indicated in Paragraph 5(a), of the accrued retirement benefit being allocated in Paragraph 5(a). If the Participant dies before payments to the Participant have begun and before payments to the Alternate Payee have begun, the Plan shall pay the Alternate Payee a benefit based upon the Plan's pre-retirement survivor benefit for the percentage in Paragraph 5(a) of the accrued retirement benefit being divided in Paragraph 5(a). No payments shall be made under this paragraph if the Participant dies after payments to the Alternate Payee have begun or before the Participant has qualified for the pre-retirement survivor benefit.]**
11. The Alternate Payee shall include in **[his/her]** gross income, for the tax year of receipt, all retirement benefit distributions that **[he/she]** receives pursuant to the Participant's assignment of benefits under this EDRO; and, accordingly, the Participant shall not include such benefit distributions in **[his/her]** gross income. The Alternate Payee shall be treated as the sole distributee under IRC Sections 72 and 402 of any payment or distribution that is made to **[him/her]** under the Participant's assignment of benefits under this EDRO.
12. If the pension has been funded in part by after-tax contributions by the Participant, the after-tax contributions as of the allocation date in Paragraph 5(a) of this Order shall be deemed to be financing the pensions of both the Participant and the Alternate Payee and shall be attributed to each using the percentage in Paragraph 5(a) of this Order.

13. The Participant and the Alternate Payee agree that any fees or expenses incurred by the Plan due to this Order or the benefit election by the Alternate Payee under this Order be allocated **[insert percentage]** to Participant and **[insert percentage]** to Alternate Payee.
14. This assignment of benefits shall not require the Plan to provide any type or form of benefit, or any option, not otherwise provided under the Plan. This assignment shall not require the Plan to provide increased benefits, determined on the basis of actuarial equivalent values. This assignment shall not require the Plan to provide benefits to the Alternate Payee which are required to be paid to another alternate payee under another order previously determined to be an EDRO, or as otherwise provided by Section 11 of the Eligible Domestic Relations Order Act (Public Act 46 of 1991).
15. This Order must be filed prior to the Participant's retirement date or amend an earlier Order that was filed before the Participant's retirement date. The Plan and Act do not accept an EDRO filed after the Participant's retirement date.
16. The Participant, the Alternate Payee and the Court intend this Order to be an EDRO under the Eligible Domestic Relations Order Act (Public Act 46 of 1991), the Plan and related legislation.
17. In the event the Plan Administrator determines this Order not to be an EDRO satisfactory to the Plan, the Participant and Alternate Payee hereby agree to submit to and request a court of competent jurisdiction to modify the Order to make it an EDRO satisfactory to the Plan in such a manner that will reflect the parties' intent as herein expressed and thereafter to enter an order modifying this Order, said modification order to be entered nunc pro tunc, if appropriate, so as to comply with Public Act 46 of 1991, the Plan and related legislation.

\_\_\_\_\_  
Circuit Court Judge

Approved as to form:

\_\_\_\_\_  
Plaintiff

Date

\_\_\_\_\_ P \_\_\_\_\_

Date

Form EDRO

Attorney for Plaintiff

\_\_\_\_\_  
Defendant

Date

\_\_\_\_\_  
Attorney for Defendant

Date

Distribution of copies:

- Original to Circuit Court Clerk
- Certified copy to the Director/Deputy Director of the Retirement System

SAMPLE