

Synopsis of laws governing division of MPERS benefits

The Municipal Police Employees' Retirement System ("MPERS") is a defined benefit system and not a defined contribution system, so the system pays retirement benefits based upon a formula and not merely upon employee and employer contributions plus the earnings made thereon. This is significantly different from what you would ordinarily find in a 401(k) or 457(b) plan. Consequently, the future benefits that will be payable to a MPERS retiree have no direct relationship to the contributions that are paid into MPERS.

The benefit payable to a vested member is established at La. R.S. 11:2221 *et seq.* and will be paid to the member during his lifetime. The member may elect a joint and survivor annuity option, which would provide a benefit to his designated beneficiary upon his death¹. These benefits will be payable to either the member or the beneficiary for their life even after the member has exhausted his employee or employer contributions.

MPERS is a governmental pension plan, therefore the provisions of ERISA and the Internal Revenue Code concerning Qualified Domestic Relations Orders ("QDRO") do not apply². Instead, a division of benefits paid by the system is governed by Louisiana community property law and by La. R.S. 11:291 and 2221 *et seq.* Payments cannot be made by MPERS until the member dies, retires, or terminates employment and requests a refund of his or her contributions³.

It is helpful to understand that MPERS provides three types of benefits:

1. Retirement—income deferred until a member is vested, terminates employment, and begins receiving benefits;
2. Disability—income paid to approved applicants; and
3. Survivor—benefits paid to qualified survivors of employees who die prior to retiring.

Retirement and survivor⁴ benefits may be divided with a former⁴ spouse in accordance with a community property settlement. Under *Bordes v. Bordes*, 98-1004, 730 So.2d 443 (La. 4/13/99), disability benefits are the member's separate property and, for MPERS, may not be divided until the member reaches the age where they would be eligible for normal (regular) retirement, has a service-connected disability, and chooses to convert to a regular retirement.

Since there is no direct relationship between the employee or employer contributions that are paid into the system and the retirement benefits eventually paid, the community property interest of the former spouse of an active member in MPERS is not easily subject to a present value calculation. Such calculations are best made by a qualified actuary.

While the Federal QDRO provisions do not apply to MPERS, state law does require MPERS to have a certified copy of a legally correct and acceptable court order before it can divide retirement benefits, survivor benefits or a refund of accumulated employee contributions⁵. Judgments or orders dividing benefits as part of a community property settlement or judgment of partition are deemed

¹ See La. R.S. 11:2224.

² See 26 USCA § 401(a)(13), 411(e)(1)(A), 414(d) and (p)(9); 29 USCA § 1002(32), 1003(b)(1) and 1056(d)(3).

³ See also *Sims v. Sims*, 358 So.2d 919 (La. 1978), at pages 923-924; *Hare v. Hodgins*, 586 So.2d 118 (La. 1991), at the bottom of page 126.

⁴ *LASERS v. McWilliams*, 2006-2191, 996 So.2d 1036, (La. 12/2/08)

⁵ See La. R.S. 11:291; *LASERS v. McWilliams*, *supra*.

interlocutory until approved as acceptable by MPERS⁶. MPERS will also need a copy of the ex-spouse's social security card to ensure proper reporting to the IRS. If MPERS does not receive a certified copy of such an order, then when a refund or benefits become payable, the entire amount will be paid directly to the member, the member's named beneficiary or the member's survivor(s)⁷. Payment so made will absolve MPERS of any responsibility to account to the ex-spouse, and the recipient(s) will be solely responsible for any accounting that may be due⁸.

Included below is a sample domestic relations order, which you may review. Your order should include paragraphs I through VIII, including an appropriate alternative clause from III. If the member has already retired without taking DROP or IBO, then paragraph IV may be omitted. Please keep in mind that the sample order does not cover every possibility in partitioning a member's interest in the system but should give you some idea as to the type of orders we do accept. Any modification(s) should conform to this model.

The opinion expressed herein represents an informal staff opinion. As such, it is not binding on MPERS. It does, however, reflect the staff's current position regarding these matters.

⁶ See La. R.S. 9:2801(B).

⁷ See LSA- R.S. 11:291(E) and 441 *et seq.*

⁸ See *Succession of Tucker*, 445 So.2d 510 (La. App. 3rd Cir. 1984), writ denied 447 So.2d 1077 (La. 1984); *Tucker v. District Attorney's Retirement System*, 445 So.2d 514 (La. App. 3rd Cir. 1984), writs denied 447 So.2d 1080, 1081 (La. 1984). See also, LSA-R.S. 23:638.

SAMPLE DOMESTIC RELATIONS ORDER

I.

IT IS ORDERED, ADJUDGED AND DECREED that this Court finds the parties in the above captioned matter were married to each other on (1), and were subsequently divorced; that a community property regime existed during the marriage of the aforesaid parties, which regime was terminated effective (2), 20__; and that this Court has jurisdiction of this action and these parties and is the proper Court to render this Order.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court finds that, during the existence of the aforesaid marriage, (3), whose social security number⁹ is XXX-XX- (4), and whose mailing address is (5), was a member of the Municipal Police Employees' Retirement System ("MPERS"), thereby establishing a community property interest in funds or benefits that may become payable by MPERS because of that membership.

III.

Alternative Clause 1:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that (6), whose social security

⁹ MPERS suggests that all but the final four digits of the parties' social security numbers be redacted and supplied to the system in a separate letter or document; however, failure to provide these numbers could delay or prevent the completion of the DRO approval process.

number¹⁰ is XXX-XX- (7), and whose mailing address is (8), shall receive (9) % of any funds or benefits that may become payable by MPERS to (3).

Alternative Clause 2:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that (6), whose social security number is (7), and whose mailing address is (8), shall receive a percentage of any funds or benefits that may become payable by MPERS to (3), this percentage to be calculated as follows:

One-half (1/2) of a fraction, the numerator of which is the number of years of service credit earned or purchased by (3) during the existence of the aforesaid community property regime, to-wit, from (1) until (2), and the denominator of which is the total number of years of service credit (3) has with MPERS as of the date funds or benefits become payable by MPERS.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that (6), shall also receive the same percentage as set forth in the preceding section on any funds deposited in (3) DROP or IBO Account and shall be payable to (6) upon the retirement or termination of employment of (3).

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that (6), shall also receive the same percentage as set forth in the preceding section on any benefit that becomes due and

¹⁰ MPERS suggests that all but the final four digits of the parties' social security numbers be redacted and supplied to the system in a separate letter or document; however, failure to provide these numbers could delay or prevent the completion of the DRO approval process.

owing to any survivor or beneficiary of ____ (3) ____, upon his or her death.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that MPERS divide any funds or benefits that may become payable by it to ____ (3) ____, and that MPERS pay the aforesaid percentage of such funds or benefits directly to ____ (6) ____ at his or her above address, or such other address as ____ (6) ____ may advise MPERS in writing in accordance with the following paragraph.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ____ (6) ____ shall provide MPERS with a certified copy of this Order within thirty (30) days after it is signed by the undersigned Judge, and that ____ (6) ____ shall inform MPERS in writing of all future changes of mailing address within thirty (30) days after such change of address becomes effective.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, if ____ (6) ____ predeceases ____ (3) ____, all funds or benefits shall revert to ____ (3) ____, his or her survivor(s) or his or her beneficiary(ies)¹¹.

¹¹ This paragraph tracks the language of La. R.S. 11:291(F).

FOOTNOTES:

- (1) Date of Marriage
- (2) Date community property regime terminated
- (3) Name of MPERS member
- (4) Social Security Number of MPERS member
- (5) Current mailing address of MPERS member
- (6) Name of former spouse of MPERS member
- (7) Social Security Number of former spouse of MPERS member
- (8) Current mailing address of former spouse of MPERS member
- (9) Community interest of former spouse in MPERS member's retirement, expressed as a percentage