



Montana Public Employee Retirement Administration  
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**Defined Benefit (DB)**

# **Family Law Order**

**Information**

**for participants of**

**Public Employees' Retirement System  
Judges' Retirement System  
Game Wardens' and Peace Officers' Retirement System  
and  
Sheriffs' Retirement System**



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## INTRODUCTION

Family Law Orders (FLOs) assign all or a portion of a retirement system member's benefit rights to the member's alternate payee (generally the ex-spouse). A FLO must be either incorporated directly into or referenced in a court order, judgment or decree issued under Title 40 of the Montana Code Annotated. Each FLO must also contain a statement that it is subject to review and approval by the Public Employees' Retirement Board (the Board).

FLOs have more restrictive criteria under Montana law (Section 19-2-907, MCA - see Appendix B) than Qualified Domestic Relations Orders (QDROs) have under federal law (26 U.S.C. - 72, et seq. and 29 U.S.C. - 1001, et seq.). A properly drafted FLO will meet the criteria necessary for a QDRO. However, not all QDROs will meet FLO criteria.

**The information in this publication is based on Montana law as of July 1, 2021. If this information conflicts with statute or rules, the statute or rules will apply.**

These formats are a starting point only, not a definitive interpretation of what is legally required to implement a particular FLO. However, FLO provisions structured similarly to the examples provided here are easier for Board staff to review. It may be necessary to harmonize several of the examples to achieve the desired result. These examples do not address every potential complication or issue which may arise. Individual circumstances require careful consideration of all alternatives available to both the member and the alternate payee.

MPERA administers eight defined benefit retirement systems as follows: Public Employees' Retirement System (PERS), Firefighters' Unified Retirement System (FURS), Judges' Retirement System (JRS), Game Wardens' and Peace Officers' Retirement System (GWPORS), Highway Patrol Officers' Retirement System (HPORS), Municipal Police Officers' Retirement System (MPORS), Sheriffs' Retirement System (SRS), and Volunteer Firefighters' Compensation Act (VFCA). Each system has unique payment options and beneficiary requirements.

**The information in this publication is for members of the PERS, JRS, GWPORS and SRS defined benefit systems.**

MPERA also administers the PERS Defined Contribution (PERS-DC) plan and the Deferred Compensation (457) plan. If you are in one or both the PERS-DC or the 457 plan and need information about assigning all or a portion of one or both accounts to an alternate payee (usually an ex-spouse), the information here is not relevant to you. Please contact MPERA for information and templates specific to the PERS-DC and/or the 457 Plan.

## FLO COMPONENTS

While we strongly recommend you use this publication to draft your FLO, we also have various templates available in electronic and paper form. If you would like a template(s) please contact our office and we will determine the appropriate template(s) to send you.

The sections outlined below provide information necessary for administration of a FLO and meet the statutory requirements. These suggested formats apply to all retirement systems with some variations noted specific to the retirement system. It is important to keep in mind as you work through the sections of the FLO that PERS, JRS, GWPORS, and SRS members have four retirement benefit options which they may designate upon retirement. When drafting the FLO, these differences must be a consideration. The asterisks denote further explanation of the section, limiting circumstances to consider, or an explanation for alternatives to address individual circumstances.

### 1. THE PARTIES.

- A. [PAYEE NAME] is a participant\* in the [NAME OF RETIREMENT SYSTEM]. \*\*Payee's full legal name, address, social security number, and birth date are:

[PAYEE NAME]  
[PAYEE MAILING ADDRESS]  
\*\*\*[PAYEE SOCIAL SECURITY NUMBER]  
\*\*\*[DATE OF BIRTH (month spelled out)]

\*A participant can be a member of the retirement system, an actual or potential beneficiary, survivor, or contingent annuitant of the system.

\*\*If the FLO contains a designation of either the payment option or a beneficiary insert the following language:

"Payee has, or may have in the future, the right to designate payment options and beneficiaries under [Acronym for Retirement System]."

- B. [ALTERNATE PAYEE NAME]\* is an alternate payee entitled to marital property from Payee, pursuant to Section 19-2-907, MCA, as specified in this document. Alternate Payee's full legal name, address, social security number, and birth date are:

[ALTERNATE PAYEE NAME]  
[ALTERNATE PAYEE MAILING ADDRESS]  
\*\*[ALTERNATE PAYEE SOCIAL SECURITY NUMBER]  
\*\*[ALTERNATE PAYEE DATE OF BIRTH (month spelled out)]

\*May be a child, spouse or parent who may be entitled to child support, maintenance or marital property, or parental support, respectively.

\*\* The Social Security Number and the Birth Date can be filed separately in a Sensitive Data Sheet.

## 2. RIGHT TO MONETARY PAYMENTS.

### A. REFUNDS

If Payee withdraws accumulated contributions from [Acronym for Retirement System], Alternate Payee is entitled to the first [\_\_\_\_\_] Payee may withdraw.\*\*

\*May be a dollar amount or a percentage. Either must be specified or enough information must be provided for calculation of the payment amount at the time of withdrawal. Below is a list of alternative formats to use for the alternate payee payment in the event payee withdraws accumulated contributions.

#### **Examples of alternative formats for withdrawal of accumulated contributions for payment to alternate payee.**

- \$5,000 plus 5% interest from July 1, 2012 to the date of withdrawal compounded annually.
- 50% of the withdrawal or \$5,000, whichever is less.
- a percentage of the withdrawal calculated as follows: 50% times 120 months (months of marriage during service) divided by the number of months of service credit at the date of withdrawal.

Please note these are examples and should not be viewed as the only choices available under the FLO.

\*\*May not be more than the member may withdraw.

### B. MONTHLY PAYMENTS ON SERVICE RETIREMENT.

If Payee receives a service retirement benefit\* during Payee's life\*\*, Alternate Payee is entitled to receive the portion specified below.

\*Participants in the various systems may be entitled to service retirement benefits because of the member's retirement. Four alternative formats for payment of the retirement benefit to the alternate payee are outlined below. Please note these are examples and should not be viewed as the only choices available under a FLO.

\*\*All payments are limited to the life of the participant whose benefit payments are being divided. In addition, payments may be limited to the life of the alternate payee, a specified amount of time or date, or the life of another relevant specified participant. On the other hand, the death of the alternate payee does not conclude payment obligations to the alternate payee's heirs or devisees unless the FLO limits payment to the life of the alternate payee.

#### **Examples of alternative formats for payment of the retirement benefit to alternate payee:**

##### ALTERNATIVE 1 - FLAT DOLLAR AMOUNT OF MONTHLY BENEFIT

Alternate Payee is entitled to receive \$500 of the monthly retirement benefit payment or 50%, whichever is less, otherwise payable to Payee for each month until July 1, 2025\*. Thereafter, the Alternate Payee is entitled to nothing.

\*For this alternative, where a fixed dollar amount is set, reference must be made to the period or length of time payment to alternate payee is to be made. This alternative sets a fixed amount to be paid each month for a specific time-period, alternatively a fixed number of years could be set. This can be distinguished from Alternatives 3 and 4 below, where no dollar amount is set, but a percentage of each

payment (including adjustments) is paid.

This alternative does not take into consideration the amount of the participant's potential future benefit as it may not be known at the time of the dissolution. It also does not take into consideration any post-retirement adjustments that may be granted.

#### ALTERNATIVE 2 - FLAT DOLLAR AMOUNT WITH INTEREST

Alternate Payee is entitled to receive \$10,000\* plus interest beginning January 1, 2012 and ending on the effective date of Payee's retirement, at a rate of 5% per annum compounded annually (the sum of principal and interest will be called the entitlement), to be received at a payment rate of \$700 per month or 50% of the initial month's benefit payment otherwise payable to Payee, whichever is less. The entitlement will be divided by the appropriate payment rate to determine the number of months of full payments to be made, beginning with the second month of benefits. Any partial payment will be paid in the first month. \*\*

\*Note critically that the total potential payment must always be limited to the duration of payments to Payee or any survivor or contingent annuitant in the PERS, JRS, SRS, and GWPORS. The system cannot be obligated to pay a monthly amount to an alternate payee when there is no ongoing benefit to split such as at the death of a member under an option 1 retirement benefit.

\*\*Although the specified payment amount and the number of months must be calculated, this language does establish both. It is important that the interest end on the date of the member's termination, so that the full entitlement amount can be accurately calculated on that date. It is also important that the partial payment be made in the first month, so no adjustment is needed after the initial payment.

#### ALTERNATIVE 3 - FORMULA METHOD --Rofle Formula

Alternate Payee is entitled to receive a percentage of each monthly benefit payment which would otherwise be payable to Payee. The percentage to be received by the Alternate Payee will be calculated as 50% times 120 months\* divided by the total number of months\*\* used to calculate Payee's retirement benefit.

\*The percentage and the number of months to be specified in the order are open to negotiation between the parties. In this example, a somewhat simplistic but effective method is used to split the benefits equally. The parties were married for 10 years while Payee was a member of the retirement system. If Payee remained a member of the system for 15 more years before retiring, the resulting calculation would give Alternate Payee 50% times 120 months divided by 300 months, or 20% of Payee's benefit, including any cost-of-living or other future increases.

\*\*The total months of service credit used may include all retirement system-covered employment and any other service the member purchased or receives credit for prior to retirement. The retirement system uses months of service credit to the nearest 100th of a month.

**Note:** The formula used in this alternative provides the calculation to divide the benefit at the date of the member's retirement. This may be a more equitable way of determining the percentage payable to the alternate payee if the participant is still an active member. In this instance, the actual percentage amount cannot be determined at the time of the dissolution because it is not known how long the participant will continue to work.

## ALTERNATIVE 4 - FORMULA METHOD

Alternate Payee is entitled to receive a proportional amount of each monthly benefit payment, which proportion is represented by a fraction with \$400 as a numerator and the initial month's benefit payment which would otherwise be payable to the Payee as the denominator.\*

\*Alternative 4 can be expressed as a percentage, therefore, this alternative will divide, on a percentage basis, the benefit payments as well as any post-retirement adjustment, guaranteed annual benefit allowance, cost of living allowance or ad hoc increase in benefit payments.

**Note:** The formula for dividing the benefit may be modified in any way desired to meet individual needs and circumstances.

### C. DISABILITY OR SURVIVORSHIP PAYMENTS.

If Payee receives a disability retirement benefit or in the event of Payee's death before retirement, Alternate Payee is entitled to payments from the <<Retirement System>> in the proportionate amount of [set sum or proportion] of Payee's monthly disability retirement benefit or a survivorship benefit. The maximum amount of disability or \*survivorship benefits that may be apportioned to an alternate payee is the monthly benefit that would have been payable on the date of termination of service if the member had retired without disability or death.\*\*

\*Reference to limitation of a survivorship benefit must be included, if pertinent, in a FLO for PERS, JRS, GWPORS, and SRS.

\*\*All payments are limited to the life of the participant whose benefit payments are being divided. In addition, payments may be limited to the life of the alternate payee, a specified amount of time or date, or the life of another relevant specified participant. On the other hand, the death of the alternate payee does not conclude payment obligations to the alternate payee's heirs or devisees unless the FLO limits payment to the life of the alternate payee.

**Note:** Statute limits the amount of disability or survivorship benefit payable to an alternate payee. [§ 19-2-907(5)(b), MCA.] Because of this limitation by statute, the disability or survivorship benefit payment for the alternate payee may be zero.

### D. INCREASES

All payments to the Alternate Payee <<shall OR shall not>> include the above specified percentage of any cost of living or other future increases.\*

\*Retirement benefit adjustments for which a participant is eligible after retirement may be paid as a percentage to the alternate payee only if the existing benefit is paid as a percentage. The adjustments must be paid as a percentage in the same ratio as the existing benefit payments, but if increases in the Alternate Payee's benefit is not intended, the FLO must specify that payments to the Alternate Payee *shall not* include cost of living or other future increases.

**Note:** If Participant is in more than one retirement system or is eligible for multiple monthly benefits from the same retirement system, the FLO must specify which benefit or benefits to which the FLO applies. If it is not included in the FLO, it is not subject to distribution to the FLO. Applies to all FLOs created after February 29, 2020.

### 3. DESIGNATION OF RETIREMENT OPTIONS.

[Acronym for Retirement System] allows Payee to choose a specified form of benefit payment allowable by statute. Payee is required to designate Option \_\_\*, as the specified form of benefit payment. Such designation cannot be changed except by legally recognizable modification of this Order.\*\*

**\*Only members of the PERS, JRS, GWPORS or SRS** have the right to choose a specified form of benefit payment. This right extends only to monthly service retirement or disability retirement benefit payment not to withdrawals of contributions. An explanation of the retirement benefit options follows:

Option 1 – monthly benefits for the member's life only. Option 1 provides the highest monthly benefit during member's lifetime but will end upon the member's death.

Option 2 – monthly benefits for the member's life, plus a continuing monthly benefit to the designated contingent annuitant for his/her life. Certain restrictions apply.

Option 3 – monthly benefits for the member's life, plus a continuing monthly benefit of 1/2 the member's benefit to the designated contingent annuitant for his/her life.

Option 4 – monthly benefits for a certain time period or for the retiree's lifetime, whichever is greater. The member may elect either a 10- or a 20-year period. If the member dies within the period elected, benefits will continue to be paid to the contingent annuitant(s) for the remainder of the 10- or 20-year period elected. Certain age restrictions apply.

If the FLO is silent with respect to retirement options or if the FLO specifies a member may choose a retirement option, then the member may choose any option they deem to be in their best interest, and the resulting benefit amount will be divided according to the terms of the FLO. If, under the terms of the divorce decree, the intent of the parties is to ensure that the alternate payee will continue to receive a benefit following the death of the retirement system member, then the FLO could require the participant to designate a monthly payment option to provide for this. The FLO could require the participant to designate the alternate payee, a child, new spouse, or someone else as their beneficiary or contingent annuitant. See the next section, DESIGNATION OF BENEFICIARIES/ CONTINGENT ANNUITANTS, for a further explanation.

\*\*Once approved as a Family Law Order by the Board, the Alternate Payee's rights and interests established in the approved FLO may only be modified by another FLO.

### 4. DESIGNATION OF BENEFICIARIES/CONTINGENT ANNUITANT.

[NAME OF RETIREMENT SYSTEM] statutes allow Payee to choose a beneficiary\*. Payee is required to designate the Alternate Payee as a or the beneficiary.\*\* Such designation cannot be changed except by legally recognizable modification of this Order.\*\*\*

\* The designation of the beneficiary is important for different reasons in different contexts.

\*\*Before retirement, the FLO may require payee to designate the alternate payee as a primary beneficiary to receive a proportion of any death payments or as the primary beneficiary to receive 100% of any death payments.



At retirement, if the Option 1 retirement benefit is chosen, a designated beneficiary is only entitled to the excess, if any, of the member's accumulated contributions less the total of the retirement benefits paid to the retired member. A beneficiary will share an excess with other beneficiaries, the beneficiary will receive 100% of any excess. If the Option 2 or 3 retirement benefit is chosen, the contingent annuitant receives benefits payable to them for their life, regardless of the amount paid to the member (although the member's monthly payments are reduced). If named a beneficiary, the alternate payee will share the continuing benefit with the contingent annuitant. If named the sole beneficiary, they are the contingent annuitant to receive 100% of the continuing benefit.

## DEFINITIONS:

**Beneficiaries** may be natural persons, charitable organizations, the estate of the payment recipient, or trusts for the benefit of natural living persons. A primary beneficiary is a beneficiary to receive payments upon death of a member and will receive payments before any other beneficiaries. Contingent beneficiaries will only receive benefits if the primary beneficiaries are not living. Members of these retirement systems may designate primary beneficiaries and contingent beneficiaries on the membership card before retirement and at retirement upon the election of Option 1.

**Contingent annuitants** are persons a retired member designates under options 2, 3, or 4 to receive a continuing benefit after the retired member dies. The member cannot designate contingent annuitants before retirement but must designate them when selecting the optional retirement. The member initially receives the benefit and after the member's death the contingent annuitant receives a continuing benefit. The FLO may require the Payee to designate the Alternate Payee as a contingent annuitant if Option 2, 3, or 4 is designated **or** the FLO may specify that an Alternate Payee is to receive a set sum or proportion of any benefit otherwise payable to a contingent annuitant upon the payee's death. In other words, the designated contingent annuitant and the alternate payee can be the same person, but they do not have to be. (See Appendix D for examples.)

**Survivors** are beneficiaries who elect a monthly survivorship benefit rather than the lump sum death payment upon a member's death before retirement.

\*\*Once approved as a Family Law Order by the Board, the Alternate Payee's rights and interests established in the approved FLO may only be modified by another FLO.

## 5. DEATH OF ALTERNATE PAYEE

*This section could state limitations, if any, pursuant to 19-2-907(7), MCA, regarding the alternate payee's death before the payee's or before receiving any payment(s). Unless a family law order specifies the alternate payee's rights and interests revert to the participant upon the alternate payee's death, the alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance or by designation of a beneficiary.*

In the event the Alternate Payee predeceases Payee:  
Alternate Payee's rights and interests survive\* his/her death; OR  
Alternate Payee's interest shall revert to payee.

\*Note that if the Payee designates the Alternate Payee as the contingent annuitant under Option 2 or 3 AND the Alternate Payee predeceases the Payee, the Alternate Payee's share cannot survive his or her death.

## 6. EFFECT

This order is subject to review by the Montana Public Employees' Retirement Board and is only effective upon the Board's approval.\* Alternate Payee's rights and interests established in this Order may be modified only by a subsequent Family Law Order amending this one.

\* The FLO may not be effective any earlier than the date the FLO is received by the MPERA. A FLO cannot be made retroactive. If the recipient is a retired member receiving a benefit, the FLO cannot be effective earlier than the first of the month following receipt by the MPERA. Each FLO establishing a final obligation concerning payments by MPERA must contain a statement that the order is subject to review and approval by the Public Employees' Retirement Board. The Order will only be a Family Law Order on approval by the Public Employees' Retirement Board.

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## Appendix A

### FAMILY LAW ORDER REQUIREMENTS SAMPLE CHECKLIST

To be approved as a Family Law Order (FLO), the judgment, decree or order must incorporate the following information:

#### **Type of Disposition:**

- Statement that the FLO is a disposition of:
    - child support;
    - parental support;
    - spousal maintenance; or
    - marital property
- under Title 40 of the Montana Code and in compliance with 26 USC 414(p).

#### **Section 1: The Parties**

##### A. Participant:

- Name of the Participant and their retirement system
- Status of the Participant:
  - active member
  - inactive member
  - benefit recipient
  - potential benefit recipient
  - survivor
  - contingent annuitant

##### Participant's Demographics:

- Address of Participant
- Social Security Number of Participant - can be sealed
- Birth Date of Participant - can be sealed

##### B. Alternate Payee:

- Name of the proposed Alternate Payee
- Address of Alternate Payee
- Social Security Number of Alternate Payee - can be sealed
- Birth Date of Alternate Payee - can be sealed

#### **Section 2: Right to Monetary Payments**

Optional delineation of rights transferred to the Alternate Payee may be no greater than member's rights under the retirement system.

- ##### A. Refund of accumulated contributions (upon Participant's termination from the system) apportioned to alternate payee(s) as a:
- percentage of accumulated contributions; or
  - dollar sum certain (equal or less than total accumulated contributions)

- B. Monthly allocation of payments of retirement benefits (must be limited to life of participant(s) receiving benefits):
- percentage of payment; or
  - apportioned dollar amount equal to or less than total payment

C. Disability or Survivor Benefit payments

- The maximum amount of disability or survivorship benefits that may be apportioned to an alternate payee is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. (Include this statement in FLO for clarification where pertinent.)
- The FLO provides direction for the payment of benefits to the Alternate Payee in case the member's service is terminated on account of disability or death before retirement.

D. Increases:

- If the Alternate Payee is entitled to a percentage of the Participant's benefit, the FLO specifies whether or not payments include any cost of living or future increases.

**SECTION 3: Designation of Retirement Options.**

(Options are addressed on Page 6 of the Alternative Formats.)

- The member is free to select any of the retirement options; or
- The member is required to designate one or more of the options

**SECTION 4: Designation of Beneficiary(ies) for receipt of any available death payments or lump sum payments:**

- Upon the death of the participant before retirement; and
- After retirement when no benefit continues to another under law or by the participant's election

**Designation of Contingent Annuitant** (to receive an Optional Retirement Benefit (Option 2, 3, or 4) upon the death of the retired member in PERS, JRS, GWPORS, and SRS.

- Payee required to name Alternate Payee as Contingent Annuitant at retirement; or
- Alternate Payee to receive continuing benefit otherwise payable to a Contingent Annuitant; or
- If Retired: Payee is required to maintain the designation of retirement option and Contingent Annuitant and alternate payee was named contingent annuitant for an option 2 or 3 retirement benefit. (FLO should then also address circumstances in event the Contingent Annuitant predeceases the Payee.)

8. Death of Alternate Payee This section could state the limitations, if any, pursuant to 19-2-907(7), MCA, regarding Alternate Payee's death before payee's or before receiving any payments.

## Appendix B

**19-2-907. Alternate payees -- family law orders -- rulemaking.** (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section and with section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p); and

(b) "participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify a participant and an alternate payee by full name, current address, date of birth, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) Except as provided in subsection (6)(a), a family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of either a percentage of the amount payable or a fixed amount of no more than the amount payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.

(b) The maximum amount of disability or survivorship benefits that may be paid to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. The maximum amount paid may be zero, depending on the member's age and service credit at the time of disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(5), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be paid to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be paid as a percentage only if existing benefit payments are paid as a percentage. The adjustments must be paid as a percentage in the same ratio as existing benefit payments unless the family law order specifies that the alternate payee is not entitled to benefit adjustments.

(d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount paid may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. The alternate payee's

portion must be totally disbursed to the alternate payee as soon as administratively feasible upon the board's approval of the family law order.

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments paid from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. Unless a family law order specifies the alternate payee's rights and interests revert to the participant upon the alternate payee's death, the alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance or by designation of a beneficiary.

(8) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(9) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(10) The board shall adopt rules to provide for the administration of family law orders.

## Appendix C

### FAMILY LAW ORDER ADMINISTRATIVE RULES

#### 2.43.3001 FAMILY LAW ORDERS -- GENERAL REQUIREMENTS

(1) Upon request, MPERA will provide a checklist of mandatory and optional family law order (FLO) provisions.

(2) Information concerning a participant's account will only be released subject to the terms of ARM 2.43.1405, and policies adopted by MPERA and the board.

(3) Except with respect to the DCRP, an account cannot be established for an alternate payee in a retirement system or plan.

(4) A FLO may not force a member to:

- (a) terminate employment;
- (b) retire from employment; or
- (c) belong to a specific retirement system or plan.

(5) Upon receipt of a certified copy of a stay from the issuing court or the Montana Supreme Court, MPERA and the board will suspend further consideration or implementation of a proposed FLO. Unless otherwise directed by court order, MPERA will retain payments withheld prior to receipt of the stay and simultaneously resume making payments of participant's full benefit. MPERA will take further action only on receipt of a certified copy of an order directing such action. If the stay is lifted, MPERA will proceed with consideration, approval, and implementation procedures.

(6) A restraining order may be used to temporarily stop or prohibit payment to a participant. The order must contain the same information identifying the participant and alternate payee as required for a FLO. If a proposed FLO is not received before the order expires, payments will resume and any retained payments will be made to the participant.

(7) The administrative cost, if any, of a FLO will be billed to the party filing the proposed FLO with the board, unless another party is designated in the FLO to pay the cost. Amounts owing may be offset against payments to be received by the appropriate party.

(8) An alternate payee may receive monthly benefit payments by electronic fund transfer upon submission of a properly executed form required by MPERA.

(9) An alternate payee must promptly inform MPERA of any change of name or address.

#### 2.43.3008 FAMILY LAW ORDERS – CONTENTS AND DURATION FOR DEFINED BENEFIT PLANS

(1) Pursuant to this rule and ARM 2.43.3009, the board will accept and apply family law orders (FLOs) in the PERS DBRP, and the JRS, SRS, GWPORS, HPORS, MPORS, and FURS.

(2) Specific designations of a participant(s) in a FLO may include:

- (a) for all systems and plans listed in (1), an individual "member" (active, inactive, or retired);
- (b) for the PERS DBRP, or JRS, SRS, and GWPORS, "primary" and "contingent beneficiaries" eligible to receive a lump sum payment and "contingent annuitants"; and
- (c) for HPORS, MPORS, and FURS, "survivors" and "designated beneficiaries" who are eligible to receive lump sum payments.

(3) FLOs for participants who are in more than one retirement system, choose to be in a DROP, or are eligible for multiple monthly benefit payments from the same retirement system must specify the benefit or benefits to which the FLO applies. If a benefit is not included in a FLO, it is not subject to distribution pursuant to the FLO.

(4) A FLO may specify a future effective date provided:

- (a) a FLO may not be effective any earlier than the date the FLO is received by MPERA;
- (b) if the participant is a benefit recipient, the first monthly benefit payment that may be divided is the first benefit payment following the month MPERA receives the FLO; and

(c) a FLO may not provide for payments to an alternate payee prior to the date on which the participant first receives a payment from the retirement system or plan.

(5) Unless otherwise specified in the FLO, payments to an alternate payee will continue only while the participant is receiving payments. The FLO may further limit payments to:

- (a) the life of the participant whose payment rights are being transferred;
- (b) a specified maximum time;
- (c) the life of the alternate payee; or
- (d) the life of a designated participant.

(6) The two basic types of payments allowed to alternate payees are:

(a) A "defined sum" must designate a specific total dollar amount to be paid to the alternate payee in the form of a fixed dollar amount payable for a designated maximum number of months. If the fixed monthly payment designated is more than the total monthly benefit or payment to the participant, the lesser amount will be paid until the alternate payee receives the specific total dollar amount. If the defined sum cannot be divided evenly by the number of payments or monthly amount, any odd amount will be paid in the first payment. The defined sum, the designated monthly dollar amount, and the designated number of months will not be increased by subsequent conditions or events. Payments will cease when the defined sum is paid or when payments from the account end.

(b) A FLO may order "proportionate payments" by designating either a fixed percentage or a formula describing how to calculate the percentage. The fixed percentage must be expressed as a specific percentage or as a fraction for which the numerator and denominator are indicated. A formula calculating a fixed percentage may use months, years, or dollar amounts to establish a proportionate benefit.

2.43.3009 FAMILY LAW ORDERS -- APPROVAL AND IMPLEMENTATION FOR DEFINED BENEFIT PLANS (1) A participant or alternate payee must submit a certified copy of a family law order (FLO) to the MPERA for board approval. The board has delegated authority for approval to the executive director of MPERA.

(2) All FLOs must be applied prospectively and may only allocate future payments. However, a FLO may include procedures for collecting retroactive amounts from future payments.

(3) For purposes of allocating a lump sum payment, the FLO must be received before the payment is mailed or otherwise conveyed to the participant.

(4) If a member requests a refund, the MPERA will notify the alternate payee. The alternate payee may request a direct payment or may roll the payment over to another eligible plan. Within 60 days of the date of notification, the alternate payee must inform MPERA of his or her choice and if necessary, provide any information for a rollover to MPERA. Otherwise a direct payment will be made to the alternate payee after 60 days.

(5) Beginning on the effective date, payments to the participant, if any, will be adjusted as directed in the FLO and payments to the alternate payee(s), if any, will be retained by the MPERA. If the proposed FLO is approved, retained payments will be paid to the alternate payee(s); if not approved, to the participant.

(6) The board's decision to approve or not approve a FLO is final unless the participant or alternate payee files a request for an administrative contested case hearing within 10 days from the date the MPERA sends notice of the decision. If an administrative hearing is properly requested, the board must make the final administrative decision after receiving the hearing examiner's proposed decision.



## Appendix D

### FAMILY LAW ORDER (FLO) EXAMPLES

The following examples reflect the monthly retirement benefit payable to the participant and the alternate payee while the participant is living as well as the continuing benefit to the alternate payee upon the participant's death. An explanation of the provisions in the FLO which result in the monthly benefit provided for the alternate payee is explained above each table. There are many more examples that could be illustrated using different formulas and assumptions. **These examples should not be viewed as the only choices available under a FLO.**

The examples are for payment options provided for by the following defined benefit retirement systems administered by the Montana Public Employee Retirement Administration: Public Employees' Retirement System (PERS); Game Wardens' and Peace Officers' Retirement System (GWPORS); Sheriffs' Retirement System (SRS); and Judges' Retirement System (JRS). The four retirement benefit options are explained in the member handbook for each of these systems along with tables and an explanation of how to calculate the monthly benefit for each option.

For each example it is assumed the member retired at age 60 with 20 years (240 months) of service credit; a final average salary of \$2,500 per month; and that the alternate payee is one year older than the member. It is further assumed that the member and alternate payee were married for 12 years (144 months) while the payee was a member of the retirement system. The member is remarried, and his/her new spouse is five years younger. In each case, the FLO provides that the alternate payee will receive a percentage of each monthly benefit and requires the percentage be calculated as follows: 50% times the number of years of service credit during the marriage (144 months) divided by the service credit used to calculate the participant's retirement benefit (240 months).

#### **NOTE:**

Members who select Option 1 will receive the benefit for life. Upon the member's death, the designated beneficiary and/or the alternate payee will receive any balance left in the member's account. That account balance is the amount available at retirement less the total benefits paid to the member. All monthly benefit payments end upon the retiree's death.

Members who select Option 2 or 3 may only select one contingent annuitant. If the FLO requires the alternate payee to be named the contingent annuitant, he/she will receive the continuing benefit upon the participant's death. Conversely, if the new spouse or someone else is named as the Option 2 or 3 contingent annuitant, the FLO may require that the alternate payee receive a proportion of the continuing benefit payable to the contingent annuitant for his/her life.

Members who choose Option 4 may select one or more contingent annuitants. The guaranteed payment continues to the member for as long as the member lives. The contingent annuitant(s) will then receive benefits for the remainder, if any, of the period certain.

\*For detailed information about these options, see the member handbook for your retirement system.

**Note:** See paragraph 3 on previous page for the assumptions used in these calculations.

**Example 1:** The participant can designate the new spouse as a beneficiary for Option 1 and as a contingent annuitant for Option 2, 3, or 4 and can elect any monthly option. The FLO requires the alternate payee be designated as a beneficiary and the FLO also requires alternate payee to receive a proportion of the continuing benefit otherwise payable to the contingent annuitant:

| Participant Living |                 |                |                 | Participant Deceased |            |
|--------------------|-----------------|----------------|-----------------|----------------------|------------|
| Payment Options    | Monthly Benefit | Member Portion | Alternate Payee | Alternate Payee      | New Spouse |
| Option 1           | 892.86          | 625.00         | 267.86          | **                   | **         |
| Option 2           | 736.61          | 515.63         | 220.98          | 220.98               | 515.63     |
| Option 3           | 807.23          | 565.06         | 242.17          | 121.08               | 282.56     |
| Option 4 - 10 yr.  | 875.98          | 613.19         | 262.79          | 262.79               | 613.19     |
| Option 4 - 20 yr.  | 822.95          | 576.07         | 246.88          | 246.88               | 576.07     |

**Example 2:** The FLO requires the participant to designate the alternate payee as the beneficiary and the contingent annuitant. The new spouse does not receive any payments at the death of participant.

| Participant Living |                 |                |                 | Participant Deceased |            |
|--------------------|-----------------|----------------|-----------------|----------------------|------------|
| Payment Options    | Monthly Benefit | Member Portion | Alternate Payee | Alternate Payee      | New Spouse |
| Option 1           | 892.86          | 625.00         | 267.86          | **                   | 0.0        |
| Option 2           | 770.63          | 515.63         | 231.19          | 770.63               | 0.0        |
| Option 3           | 827.23          | 565.06         | 248.17          | 413.62               | 0.0        |
| Option 4 - 10 yr.  | 875.98          | 613.19         | 262.79          | 875.98               | 0.0        |
| Option 4 - 20 yr.  | 822.95          | 576.07         | 246.89          | 822.95               | 0.0        |

**Example 3:** The FLO does not require the participant to designate the alternate payee as a beneficiary or to receive continuing benefits otherwise payable to the contingent annuitant (new spouse).

| Participant Living |                 |                |                 | Participant Deceased |            |
|--------------------|-----------------|----------------|-----------------|----------------------|------------|
| Payment Options    | Monthly Benefit | Member Portion | Alternate Payee | Alternate Payee      | New Spouse |
| Option 1           | 892.86          | 625.00         | 267.86          | 0.0                  | **         |
| Option 2           | 736.31          | 515.63         | 220.98          | 0.0                  | 736.61     |
| Option 3           | 807.23          | 565.06         | 242.17          | 0.0                  | 403.62     |
| Option 4 - 10 yr.  | 875.98          | 613.19         | 262.79          | 0.0                  | 875.98     |
| Option 4 - 20 yr.  | 822.95          | 576.07         | 246.89          | 0.0                  | 822.95     |

\*If the member has not received the benefit for 10 or 20 years, then the contingent annuitant(s) receive the continuing benefit only until the end of the "certain" or guaranteed period.

\*\*If the member designates Option 1 as the retirement benefit option, the named beneficiary(ies) will receive the remaining account balance, if any, upon the member's death after retirement. The account balance is the member's accumulated contributions at the date of retirement less any benefit payments received through the date of death.