

1 IMPERIAL COUNTY EMPLOYEES RETIREMENT SYSTEM

2 MODEL DOMESTIC RELATIONS ORDER A

3 Applicable to a Dissolution of Marriage or Legal Separation **Prior** to Retirement

4 **CAUTION: YOU ARE ADVISED TO SEEK COMPETENT LEGAL COUNSEL.**

5 The disposition of retirement benefits in domestic relations proceedings involves complex marital rights and tax issues.

6 The Imperial County Employees' Retirement System, its agents and consultant are not authorized to give legal advice and,  
7 therefore, make no representation as to the sufficiency of the model orders herein under applicable federal or state law or  
8 as to their legal consequences.

1 [NAME OF COUNSEL]  
2 [ADDRESS OF COUNSEL  
3 [CITY, STATE]  
4 [PHONE NUMBER]  
5 ATTORNEY FOR [PETITIONER/RESPONDENT]

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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF \_\_\_\_\_

10 In Re the Marriage of ) Case No. \_\_\_\_\_  
11 Petitioner: \_\_\_\_\_ )  
12 and )  
13 Respondent: \_\_\_\_\_ )  
14 \_\_\_\_\_ )

**MODEL ORDER A**  
STIPULATED DOMESTIC RELATIONS  
ORDER RE: DIVISION OF  
IMPERIAL COUNTY  
EMPLOYEES' RETIREMENT  
BENEFITS

15 Petitioner, \_\_\_\_\_ hereinafter [Member or Nonmember], and Respondent,  
16 \_\_\_\_\_ hereinafter [Member or Nonmember], and the Imperial County Employees'  
17 Retirement System ("*ICERS*") hereby stipulate as follows:

18 **RECITALS**

- 19 1. Member and Nonmember were married to each other on \_\_\_\_\_. They  
20 separated on \_\_\_\_\_, and this Order is intended to be incorporated into and become an  
21 integral part of any judgment dissolution of marriage or judgment of legal separation filed herein, and  
22 shall become effective only upon filing of such judgment.
- 23 2. This Court has personal jurisdiction over both Member and Nonmember and  
24 jurisdiction over the subject matter of this Order and the dissolution of marriage action.
- 25 3. *ICERS* was properly joined as a party to the Member and Nonmember's dissolution of  
26 marriage action pursuant to sections 2060 through 2065 of the Family Code.  
27  
28

1 **STIPULATION**

2 This Order is acceptable under the County Employees Retirement Law of 1937 (the '37 Act),  
3 which is set forth at section 31450, et seq., of the Government Code.

4 **IT IS HEREBY ORDERED BY THE COURT THAT:**

5 1. This Order is entered pursuant to the Family Code.

6 2. Member and Nonmember have acquired a community interest in the Member's  
7 retirement benefits attributable to periods of service in *ICERS* from the Date of Marriage up to the  
8 Date of Separation.

9 3. Pursuant to section 31685 of the Government Code, the Court allocates and awards to  
10 the Nonmember 50% of the accumulated retirement contributions and service credit attributable to  
11 the Member's service in *ICERS* during the period from the Date of Marriage up to the Date of  
12 Separation ("*ICERS* Interest") as the Nonmember's sole and separate property. All accumulated  
13 retirement contributions and service credit attributable to the Member's service in *ICERS* which are  
14 not awarded to the Nonmember pursuant to this Order shall be the Member's sole and separate  
15 property.

16 4. Pursuant to section 31685 of the Government Code, the Retirement Administrator of  
17 *ICERS* ("Administrator") shall divide the Member's accumulated retirement contributions and service  
18 credit in accordance with Paragraph 3 of this Order and establish a separate and distinct account for  
19 the *ICERS* interest awarded to the Nonmember as soon as administratively practicable after *ICERS*'s  
20 receipt of the filed endorsed copy of the signed Order and the information required by paragraph 12.

21 5. In light of section 31685.5(b) of the Government Code and notwithstanding any other  
22 provision of this Order, if the Member does not have five years of accumulated service credit as of  
23 the date of dissolution or legal separation, the Nonmember shall not be entitled to a monthly benefit  
24 but shall receive a refund of the accumulated retirement contributions and any interest that has been  
25 credited to such contributions which have been transferred to the Nonmember's account as soon as  
26 administratively practicable following the date an account was established for the Nonmember  
27 pursuant to paragraph 4 of this Order.  
28

1           6.       From and after the date that the Administrator has divided the Member's accumulated  
2 retirement contributions and service credit pursuant to Paragraph 4 of this Order, the Nonmember  
3 shall be entitled to all applicable rights, with respect to the nonmember's interest under paragraph 4,  
4 permitted under section 31685 (c) of the Government Code, including:

5                   (a)       The right to a retirement allowance; subject to the provisions of sections  
6 31685(d), 31685.5, 31685.6, 31685.7, 31685.8, 31685.9, 31685.95 and 31685.96 of the Government  
7 Code.

8                   (b)       The right to a refund of accumulated retirement contributions, subject to the  
9 provisions of section 31685.2 of the Government Code.

10                  (c)       The right to redeposit accumulated contributions that are eligible for redeposit  
11 by the Member, to the extent of the Nonmember's interest therein, subject to the provisions of section  
12 31685.3 of the Government Code.

13                  (d)       The right to purchase service credit that is eligible for purchase by the  
14 Member, to the extent of the Nonmember's interest therein, subject to the provisions of section  
15 31685.4 of the Government Code.

16                  (e)       The right to designate a beneficiary to receive his or her accumulated  
17 contributions and any interest that has been credited to such contributions where death occurs prior to  
18 retirement.

19                  (f)       The right to designate a beneficiary for any portion of the Nonmember's  
20 *ICERS* Interest which is payable at the time of his or her death.

21           7.       If the Nonmember fails to designate a beneficiary pursuant to paragraph 6(e) or 6(f) of  
22 this Order or the designated beneficiary does not survive the Nonmember, any portion of the  
23 Nonmember's *ICERS* Interest which is payable at the time of his or her death shall be to the estate of  
24 the Nonmember.

25           8.       The Nonmember's *ICERS* Interest will be increased by all applicable interest, cost-of  
26 living or other similar increases, but only to the extent permitted under the '37 Act and the  
27 Regulations of *ICERS*.  
28

1           9.       The Member and the Nonmember shall be responsible for, and pay, any taxes due in  
2 connection with his or her receipt of distributions from *ICERS*.

3           10.       The Member and Nonmember shall be responsible for filing a Designation of  
4 Beneficiary form with the Administrator.

5           11.       Member's Name. For the purpose of making any benefit payments provided by the  
6 terms of this Order or providing any notice required by the terms of this Order, Member shall submit  
7 to *ICERS* Member's current name, mailing address, and telephone number.

8           12.       Nonmember's Name. For the purpose of making any benefit payments provided by  
9 the terms of this Order or providing any notice required by the terms of this Order, Nonmember shall  
10 submit to *ICERS* Nonmember's current name, mailing address, telephone number, and date of birth.

11           13.       Notice of any subsequent change of address or telephone number shall be made in  
12 writing to *ICERS*, addressed as follows:

13                   Imperial County Employees' Retirement System  
14                   1221 W. State Street  
15                   El Centro, CA 92243  
16

17           14.       The Member and the Nonmember shall sign all forms, letters and other documents as  
18 required to effect the distribution(s) described herein and the intent of this Order.

19           15.       The Nonmember, the Nonmember's agents and attorneys are authorized to receive any  
20 and all information concerning the Member's benefits until such time as the Nonmember has  
21 received the Nonmember's *ICERS* Interest.

22           16.       Notwithstanding any other provision of this Order, the Order shall not be construed as  
23 to require *ICERS*:

24                   (a)       To provide any form of benefit or any option not otherwise provided under the  
25 '37 Act and the Regulations of *ICERS*;

26                   (b)       To provide increased benefits (as determined based on actuarial value) not  
27 available to the Member;  
28

1 (c) To provide benefits to the Nonmember which are required to be paid to another  
2 Nonmember under another Order previously entered by a Court of competent jurisdiction and  
3 acceptable under the '37 Act;

4 (d) To provide payment to the Nonmember of benefits forfeited by the Member;  
5 or

6 (e) To change the benefit election of the Member once the Member has retired.

7 17. It is further ORDERED that the Member shall act as constructive trustee of any  
8 benefits assigned to the Nonmember under this Order which may be paid to or received by the  
9 Member. The Member, as trustee, shall promptly pay or transmit any such benefits to the  
10 Nonmember at the Nonmember's last known address. It is also ORDERED that the Nonmember  
11 shall act as constructive trustee of any benefits assigned to the Member under this Order which may  
12 be paid to or received by the Nonmember. The Nonmember, as trustee, shall promptly pay or  
13 transmit any such benefits to the member at the Member's last known address.

14 18. This Order shall be administered and interpreted in conformity with the '37 Act and  
15 the Regulations of *ICERS* and other applicable law. If the '37 Act and/or the Regulations of *ICERS*  
16 are amended, then the Member and the Nonmember shall immediately take the steps necessary to  
17 amend this Order to comply with any such amendments, changes and/or modifications, or, if  
18 permissible under any such change, amendment, or modification to the '37 Act and the Regulations  
19 of *ICERS*, the Administrator may treat this Order as acceptable. The Member and the Nonmember  
20 shall be responsible for any of the costs and/or expenses associated with such amendment.

21 19. The Member, the Nonmember, the Administrator, and the Court intend that this Order  
22 meet all requirements of a domestic relations order under the '37 Act and the Regulations of *ICERS*  
23 and other laws of the State of California, and the Court shall reserve jurisdiction to modify this Order  
24 and to resolve any disputes that may arise among the parties and the Administrator concerning benefit  
25 payments or any other aspect of this Order. If any portion of this Order is rendered invalid or  
26 otherwise unenforceable, the Court reserves jurisdiction to make an appropriate adjustment to  
27  
28

1 effectuate the intent of the parties. Any future fees, taxes, and/or penalties will be assessed against  
2 the parties who then have an interest payable from *ICERS*.

3  
4 **IT IS SO STIPULATED:**

5 Dated: \_\_\_\_\_  
6 [NAME]  
7 Petitioner

8 Dated: \_\_\_\_\_  
9 [NAME]  
10 Attorney for Petitioner

11 Dated: \_\_\_\_\_  
12 [NAME]  
13 Respondent

14 Dated: \_\_\_\_\_  
15 [NAME]  
16 Attorney for Respondent

17 Dated: \_\_\_\_\_  
18 [NAME]  
19 Attorney for IMPERIAL  
20 EMPLOYEES' RETIREMENT SYSTEM

21 **ORDER**

22 The parties having stipulated thereto and good cause appearing therefore.

23 **IT IS SO ORDERED.**

24 Dated: \_\_\_\_\_  
25  
26  
27  
28  
29 JUDGE OF THE SUPERIOR COURT