

Authors

Carol Amyx	Linda S. Gross
Peggy L. Bennington	Suzanne Harris
Linda A. Chapin	Sarah Leverett
James M. Crawford, Jr.	Steven C. Neustadter
R. Ann Fallon	John H. Paulsen
Debra S. Frank	Michael C. Shea
Gary J. Friedman	Peter M. Walzer

Sandra Blair
Editorial Consultant

Project Manager
Jon Heywood
Publications Attorney



CONTINUING EDUCATION OF THE BAR • CALIFORNIA
Oakland, California

For update information call 1-800-232-3444

- o. Form: No Waiver of QPSA Without Alternate Payee's Written Consent \$20.57
- p. Form: Remaining Benefits Confirmed to Participant \$20.58
- q. Form: Intent and Construction \$20.59
- r. Form: Tax Treatment of Distributions \$20.60
- s. Form: Continued Qualified Status of Order Intended \$20.61
- t. Form: Reservation of Jurisdiction \$20.62
- u. Form: Parties' Cooperation \$20.63
- v. Form: Notices \$20.64
- w. Form: Effect of Plan Termination \$20.65
- x. Form: Attorney Fees and Costs on Enforcement \$20.66
- y. Form: Plan's Mistaken Payment \$20.67
- z. Form: Suspension or Termination of Benefits \$20.68
- aa. Form: Notices Regarding Order and Plan Procedures \$20.69
- C. Other Retirement Benefits Orders \$20.70
- D. Quasi-QDROs \$20.71

VI. COMPLETE SAMPLE QDROs

- A. Sample Form: Defined Benefit Plan QDRO \$20.72
- B. Sample Form: Defined Contribution Plan QDRO \$20.73
- C. Sample Form: Interim QDRO \$20.74

VII. FORM: EMPLOYEE BENEFITS DATA FORM \$20.75

§20.1 A. OVERVIEW

This chapter covers qualified domestic relations orders (QDROs) and other retirement benefits orders. Technically speaking, the term "QDRO" refers only to family law court orders that divide or redirect to an alternate payee benefits under (1) a private industry plan that is subject to the anti-alienation provisions of the Employee Retirement Income Security Act of 1974 (ERISA) (29 USC §§1001-1461) or (2) a retirement or tax-sheltered annuity plan maintained under IRC §401(a)(13). Although they are not QDROs under this definition, domestic relations orders (DROs) that divide qualified non-ERISA governmental retirement plans (and nonqualified governmental IRC §457 plans) and certain church retirement plans may nonetheless be treated as QDROs for income tax purposes even though they are not subject to the QDRO requirements. IRC §§402, 414(p)(9)-(10). IRAs cannot be divided by QDRO, but may be divid-

ed in kind without triggering tax under IRC §408(d)(6). Supplemental Executive Retirement Plans (SERPs) and other nonqualified deferred compensation plans are not subject to the QDRO requirements, but in most cases may be divided with similar effect. See §20.8.

NOTE► The term QDRO is also sometimes used in the context of ERISA welfare plans as a means of avoiding preemption under ERISA. These issues, which are beyond the scope of this chapter, typically arise in the context of employer-provided life insurance, when a “QDRO exception” to ERISA preemption is sometimes evoked to unscramble beneficiary designation problems that arise when the intended beneficiary is not the beneficiary designated under the terms of an ERISA plan. See, e.g., *Marriage of Egelhoff* (2001) 532 US 141, 149 L Ed 2d 264, 121 S Ct 1322.

For the attorney, addressing retirement benefits is a particularly challenging aspect of the settlement of many marital actions. This is true in part simply because resolution of retirement benefits issues (i.e., characterization, valuation, and division) is often complex and in many cases requires more plan and benefits information than many plan administrators are willing to provide voluntarily. When qualified plans are involved, another factor that makes retirement benefits issues particularly challenging is the need, whenever an interest in benefits is to be awarded to the nonemployee spouse, to obtain the plan administrator’s approval of the domestic relations order as “qualified.” This chapter provides a guide for the attorney in both (1) drafting settlement terms regarding retirement benefits and (2) preparing an order designed to gain the plan administrator’s cooperation in implementing those terms.

The chapter covers the classification of plans (see §§20.2–20.11), initial steps in approaching retirement benefits issues (see §§20.12–20.17), addressing disposition of benefits (see §§20.18–20.29), and drafting the order (see §§20.30–20.71). The chapter concludes with three complete sample QDROs (see §§20.72–20.74) and an employee benefits data form (see §20.75).

ω

II. CLASSIFICATION OF PLANS

§20.2 A. By Governing Law

Retirement plans are federal government, state government, or

private industry plans. For the attorney handling a marital action, this distinction is important primarily with respect to evaluation of the parties’ rights and options and, in cases in which the plan administrator is uncooperative, to enforcement to ensure payment to the nonemployee spouse of the share of the benefits awarded to him or her.

§20.3 1. Federal Plans

Federal pension plans are governed by federal statutory schemes. State court orders dividing community interests in federal pension benefits must meet certain requirements of federal law to be binding on the plans and will be implemented through federal agencies that may be contacted for guidance:

- **Military.** The Federal Uniformed Services Former Spouses’ Protection Act (FUSFSEA) (10 USC §1408) specifies a detailed procedure that, if satisfied, renders an order dividing a community interest in military retirement benefits binding on the military service. 10 USC §1408(a)(2), (b). Note that to be eligible for direct payment of his or her share from the military, the nonmilitary spouse must have been married to the service member for at least 10 years, during which the member performed at least 10 years of service creditable for retirement purposes. 10 USC §1408(d)(2). Members of the military are also now permitted to participate in the federally sponsored Thrift Savings Plan.
- **Civil service.** The Office of Personnel Management (OPM) must comply with a court order dividing a community interest in the Federal Employee Retirement System and the Civil Service Retirement System, as long as all required documentation is provided. 5 USC §8345(j). Federal employees may also participate in the federally sponsored Thrift Savings Plan.
- **Railroads.** The Railroad Retirement Board is required to make payments in accordance with an order dividing a community interest in most railroad retirement benefits. 45 USC §231m(b)(2). Note, however, that most participants also have other plans with their respective employers, such as, for example, the Union Pacific Railroad Company.

A domestic relations order for the disposition of benefits in a

government plan to a nonemployee spouse can be treated as a QDRO under IRC §§402 and 414(p)(11).

§20.4 2. State Plans

There are a variety of California public retirement plans, governed by California statutory schemes and administered through state and local government agencies that may be contacted for guidance:

- **CalSTRS.** The California State Teachers' Retirement System (CalSTRS) administers a retirement plan consisting of the Defined Benefit Program, which provides an annual allowance, payable in monthly installments on retirement (see Ed C §§22000-22811) or, under certain circumstances, a lump sum option with reduced monthly allowance (see Ed C §24221); the Defined Benefit Supplement Program, which provides an additional lump sum or annuity (see Ed C §§25000-25025); and the Cash Balance Benefit Program for members who earn creditable service for less than 50 percent of the full-time equivalent for the position (see Ed C §§26000-28100). Since 1996, CalSTRS has also had a cash balance plan. See Ed C §§26100-26145. Note that, under some circumstances, an employee may have an entitlement under the Defined Benefit Program, the Defined Benefit Supplement Program, and the Cash Balance Plan. See Ed C §§26400(d), 26401-26402. The Replacement Benefits Program (see Ed C §22164) was established to provide the annual benefit for higher earners that exceeds the limitations on benefits payable to that member from the Teachers' Retirement Fund under IRC §415. See Ed C §§24260-24275.
- **CalPERS.** The Public Employees' Retirement Law (PERL) is found at Govt C §§20000-21685. The California Public Employees Retirement System (CalPERS) administers a retirement plan that provides an annual allowance, payable in monthly installments at retirement. An alternate retirement plan for state employees (defined under Govt C §20281.5) hired after August 11, 2004, mandates employee contributions of 5 percent to a savings program (see IRC §401(a)) for 24 months, after which an employee then contributes into CalPERS. Service credits for this period may be elected after four years by transferring the accumulated contributions and earnings into Cal-

PERS. Other options are available. Govt C §20908. Some members of CalPERS may participate concurrently through their respective employers in a 457 Deferred Compensation Plan, a 401(k) Plan, or a 403(b) Plan. See generally Govt C §§21670-21685, 53212-53214.5, 21700-21703 (provision for school member not eligible for CalPERS). A safety employee in certain bargaining units may also participate in the State Peace Officers' and Firefighters' Defined Contribution Program. Govt C §§22960-22960.100.

- **Alternate approaches under CalSTRS and CalPERS.** The CalPERS Retirement Plan and the CalSTRS Defined Benefit Program provide for a shared-account approach that allocates an allowance only after it becomes payable to the participant. It usually requires provision for a survivor option under Fam C §2610(a). Each of these plans provides a number of possible survivor options that have a fixed percent of coverage and one survivor option that may be tailored to the exact "time rule" percentage of the nonemployee spouse or registered domestic partner; under CalSTRS that is Option 8 (Ed C §24300(a)(7)); under CalPERS Retirement Plan that is Option 4 (Govt C §21458). A segregated account is also available for the nonemployee spouse or registered domestic partner, however, which in some cases can provide a more immediate payout to the nonemployee spouse or registered domestic partner. Family Code §2610(a)(3)(A)-(B), (E) provide that, on agreement of the nonemployee spouse or registered domestic partner, a court may order the division of accumulated community property contributions and service credit into segregated accounts, as provided in Govt C §§21290-21298 (CalPERS) or Ed C §§22650-22666, 27400-27413 (CalSTRS). Although CalPERS and CalSTRS defined benefit plans provide for segregated accounts for the employee and nonemployee spouses or registered domestic partners, the disadvantages to the nonemployee spouse or registered domestic partner should be examined before this approach is selected. Under the segregated accounts for the defined benefit plans, the employee spouse's benefit will be determined using the earnings average as of the employee's date of retirement. The nonemployee spouse's or registered domestic partner's benefit will be determined, however, using an employee

earnings average as of a date (for CalPERS, the date of termination of marital status; for CalSTRS, the date of separation) earlier than the employee's actual retirement date. Consequently, division of the benefits into separate accounts in accordance with Fam C §2610(a)(3)(A)-(B) generally works to the disadvantage of the nonemployee spouse or registered domestic partner, who is typically better served by insisting that the benefits be divided, under applicable case law, in the same manner as other retirement benefits. Note also that, under the CalSTRS segregated account system, this disadvantage to the nonemployee spouse or registered domestic partner did not benefit the employee spouse. However, under legislation effective January 1, 2004, the CalPERS member's retirement allowance now includes the difference between the member's benefit as if there were no nonmember interest and the nonmember's interest, at least for the period in which the nonmember is not in "pay status." Govt C §21251.15. The attorney should consult legislative updates for any further changes to the segregated account approach.

- **County employees.** County plans are regulated by a statewide statutory scheme, the County Employees Retirement System (CERS). See Govt C §§31450-31898. Family Code §2610(a)(3)(C) provides that, on agreement of the nonemployee spouse, a court may order the division of accumulated community property contributions and service credit as provided in Govt C §§31685-31685.96. These sections provide for segregated accounts for the employee and nonemployee spouses. Unlike the CalPERS and CalSTRS segregated account approaches described above, however, the CERS approach allows the nonemployee spouse's benefit share to be based on an employee's earnings average as of the date on which the nonemployee spouse begins receiving retirement benefits. Note that not all counties have adopted the statutory segregated account approach. Further, under some circumstances, a shared-account approach may still be most beneficial to the nonemployee.
- **Municipal employees.** Municipalities have their own regulatory schemes for utilities, police, and fire employees and for elected officials, although municipalities often contract with CalPERS or the county system.

A domestic relations order for the disposition of benefits in a government plan to a nonemployee spouse usually can be treated as a QDRO under IRC §§402 and 414(p)(11).

CAUTION ▶ It is important to note that if the alternate payee is a nonemployee (nonmember) *domestic partner*, it is not clear whether the employee-member or the partner will be liable for tax on the benefits received. This issue arises because IRC §402 contains no express provision for shifting the tax to an alternate payee who is paid under a QDRO if the recipient is not a *spouse or former spouse*. The issue is further complicated by the fact that in a governmental plan, unless a domestic partner happens to be the member's dependent under IRC §152, the order cannot be treated as a QDRO for any tax purpose (because the partner would not fit the definition of an alternate payee). IRC §414(p)(11). However, assuming the distribution is made to effect a division of community property interest in the dissolution of the domestic partnership, it *may* nevertheless be that each partner will be liable for the tax due on his or her share under IRC §402 as the "distributee." See *Rodney Powell* (1993) 101 TC 489. Until guidance is issued by regulation, statute, or case law, however, the tax effect of a distribution involving the dissolution of a domestic partnership will be unclear. On tax considerations for domestic partners in general, see *California Domestic Partnerships* (Cal CEB 2005).

§20.5 3. Private Plans

The controlling regulatory bodies of law for most private plans are the Employee Retirement Income Security Act of 1974 (ERISA) (29 USC §§1001-1461) and the Internal Revenue Code. It is through ERISA, the Internal Revenue Code, and regulations that the Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation control nearly all pension, profit-sharing, stock-bonus, and other retirement plans provided by private industry employers. These plans include those of unions, large and small private companies, and law firms and other professional enterprises, as well as individual Keogh plans and SIMPLE plans. Although they are not qualified retirement plans, tax-deferred annuity plans are treated for QDRO purposes as being in the same category as their qualified plan counterparts. Individual retirement accounts or

annuities (IRAs) are not subject to the QDRO rules unless they are employer-provided, in which case ERISA may require a QDRO for their division, even though the QDRO rules do not apply for tax purposes. See 29 USC §§1002, 1003(b). Qualified private plans (see §20.7) must honor QDROs that assign all or a portion of a participant's benefits to a nonemployee spouse, child, or other dependent. Special rules apply to nonqualified plans (see §20.8).

§20.6 a. ERISA

ERISA covers both employee retirement plans and employee welfare plans. A retirement plan, referred to in ERISA as an "employee pension benefit plan" or simply a "pension plan," is a plan established or maintained by an employer, an employee organization, or both, to the extent that it provides retirement income to employees or results in a deferral of income by employees for periods extending to the termination of covered employment or beyond. See ERISA §3(2)(A) (29 USC §1002(2)(A)). Under federal regulations, if the only participants in the plan are the business owners (sole proprietor or partner or the owner's spouse), there are no "employees" in the plan and it is not covered by ERISA. 29 CFR §2510.3-3. A welfare plan, referred to in ERISA as an "employee welfare benefit plan" or simply a "welfare plan," is a plan established or maintained by an employer, an employee organization, or both to provide, for participants or their beneficiaries, any of a variety of benefits, including medical, illness, accident, disability, death, unemployment, and vacation benefits. See ERISA §3(1) (29 USC §1002(1)). This chapter addresses only retirement plans.

ERISA is organized into four titles:

- Title I addresses definitions (see ERISA §3 (29 USC §1002)); reporting and disclosure requirements (see Part 1, ERISA §§101-111 (29 USC §§1021-1031)); minimum participation and vesting standards and the form of benefit payments (see Part 2, ERISA §§201-211 (29 USC §§1051-1061); in particular, see ERISA §206 (29 USC §1056) regarding QDRO rules); minimum funding standards (see Part 3, ERISA §§301-308 (29 USC §§1081-1086)); plan and trust requirements and related fiduciary responsibilities (see Part 4, ERISA §§401-414 (29 USC §§1101-1114)); administration and enforcement, including claims procedures, enforcement, and remedies (see Part

5, ERISA §§501-515 (29 USC §§1131-1145)); and group health plan and COBRA requirements (see Part 6, ERISA §§601-609 (29 USC §§1161-1169)).

- Title II (ERISA §§1001-2008) addresses amendments to the Internal Revenue Code.
- Title III (ERISA §§3001-3043 (29 USC §§1201-1242)) addresses Department of Labor jurisdiction and administrative provisions.
- Title IV (ERISA §§4001-4402 (29 USC §§1301-1461)) addresses defined benefit plan terminations, insured benefits, and the Pension Benefit Guaranty Corporation.

Under ERISA, most retirement plans are required to be funded, with the assets held in trust. Such plans and the related trusts are subject to the fiduciary responsibility rules of Title I of ERISA, which include numerous rules designed to ensure the fairness of plans and the safety of the promised retirement benefits. Exceptions to these rules are made for some plans, most notably "Top Hat" plans (unfunded plans of deferred compensation for a select group of management or highly compensated employees; see, e.g., 29 USC §1101(a)(1)), unfunded "excess benefit" plans (see §20.8), church plans that do not elect ERISA coverage, and government plans. "Top Hat" plans are subject only to ERISA reporting and disclosure obligations, and claims regulation. Government plans, nonelecting church plans, and all unfunded "excess benefit" plans are exempt from ERISA coverage altogether.

b. Internal Revenue Code

§20.7 (1) Qualified Plans

A qualified plan under the Internal Revenue Code is one that meets the requirements under IRC §401(a)-(d) for qualification regarding, e.g., nondiscrimination, coverage, participation, vesting, contributions, and payment of benefits. A qualified retirement plan enjoys certain favorable tax treatment, primarily a current deduction of the employer's contributions to the plan and a deferral of tax to the employees on the plan benefits until they are actually received. Most qualified plans are required to contain an anti-alienation provision, with governmental plans being the major exception. See IRC

§401(a)(13). QDROs are an allowed exception to such provisions and are binding on qualified plans and on plans that were once qualified but have been disqualified. Special distribution provisions apply under the Code to QDRO dispositions from qualified plans. See, e.g., IRC §402(e). Note that if a domestic partner is able to meet the definition of an “alternate payee” as a dependent of the employee-participant, it is likely that the employee and *not* the alternate payee will be taxed on the QDRO distribution, because a domestic partner is neither a spouse nor former spouse for federal tax purposes. State tax law may come to a different result, depending on the treatment afforded domestic partnerships. But see *Rodney Powell* (1993) 101 TC 489 (community property nature of benefits resulted in nonparticipant recipient being treated as distributee, rather than participant). Until guidance is issued by regulation, statute, or case law, the tax effect of a distribution involving the dissolution of a domestic partnership will be unclear.

Tax-sheltered annuities and custodial account plans maintained under IRC §403(b), although technically not qualified plans, are also covered by the QDRO rules, including the special rules relating to the taxation of distributions to the alternate payee. In this same category are governmental deferred compensation plans under IRC §457(b), although the requirements for QDRO eligibility are considerably abbreviated. IRC §414(p)(11)-(12). Private IRC §457(b) plans can distribute under the rules for QDRO taxation; however, it appears that a spousal alternate payee may not be able to qualify for a rollover election. See IRC §§402(e)(1)(A), 414(p)(10)-(11), 457(e)(16).

§20.8 (2) Nonqualified Plans

By using a nonqualified plan (*i.e.*, a plan of deferred compensation that is not intended to meet, and has never met, the requirements for achieving qualified status (see IRC §401(a)), an employer may typically provide preferential benefits to executives and certain key employees that cannot be provided under a qualified plan. Nonqualified plans are essentially unilateral contracts for the payment of deferred compensation. They are generally unfunded, *i.e.*, no funds are set aside for the payment of benefits into a separate trust that is protected from the employer’s creditors. Nonqualified benefits that are intended to be paid from a separate “Rabbi” trust are still

considered “unfunded,” because such a trust is by definition subject to creditor claims if the employer becomes insolvent. Although unfunded, nonqualified plans nevertheless can be worth substantial amounts if and when benefits are paid.

Although a judgment in a marital action may award a community interest in benefits under a nonqualified plan to the nonemployee spouse, federal law has not expressly extended the QDRO taxation rules to such plans or clarified whether QDRO status is required for a state law award of benefits to be enforceable in the face of ERISA’s broad preemption provisions. But see *Mackey v Lanier Collection Agency & Serv.* (1988) 486 US 825, 100 L Ed 2d 836, 108 S Ct 2182. Consequently, a nonqualified plan sponsor may decline to recognize the nonemployee’s interest, particularly if the plan includes an anti-alienation clause. In such a case, an attorney for a nonemployee spouse with respect to a nonqualified plan might consider exploring approaches to the division of such a plan with an employee benefits attorney who specializes in ERISA.

Examples of nonqualified plans include the following:

- Top Hat plans or supplemental executive retirement plans (SERPs) are unfunded, nonqualified plans used to provide deferred compensation benefits for a select group of management or highly compensated employees. See ERISA §§201(2), 301(a)(3), 401(a)(1) (29 USC §§1051(2), 1081(a)(3), 1101(a)(1)). A so-called Rabbi trust will typically not cause such plans to be considered “funded” because the trust assets remain subject to the employer’s creditors.
- Excess benefit plans are plans maintained by the employer solely for the purpose of providing to employees retirement benefits that are in excess of the allowable benefits and contributions for an individual under the limits of IRC §415 for qualified plans. These plans are not subject to ERISA if unfunded and thus do not involve preemption issues. They need not be limited to executives but often are.

§20.9 B. By Type

Essentially, every qualified plan, and even most nonqualified retirement plans, can be typed as either a “defined contribution” plan or a “defined benefit” plan. This distinction is important for purposes

of QDROs and other retirement benefits orders because the type of plan will affect such considerations as the calculation of the community interest in the benefit, the survivor provisions, and the timing of the payout. Note that an employer may offer more than one type of plan and that a single plan may be a hybrid of the two types. IRC §414(k).

§20.10 1. Defined Contribution Plans

A qualified defined contribution plan is one in which a specified amount is contributed annually by the employer, and sometimes also by the employee, into an individual account and invested in trust on the employee's behalf. See *Marriage of Bergman* (1985) 168 CA3d 742, 748 n4, 214 CR 661. Such plans usually provide a statement of each participant's account at least annually. Defined contribution plans generally pay lump sums, but they may offer other forms of benefits, such as installment payments or annuities.

The most common examples of defined contribution plans are discretionary profit-sharing plans (with or without an IRC §401(k) feature) and formula plans (e.g., money purchase and target benefit pension plans). Other examples are employee stock ownership plans (ESOPs), simplified employee pensions (SEPs), and Savings Incentive Match Plan for Employees (SIMPLE) 401(k) plans. Keogh (HR 10) plans for sole proprietors may be either defined contribution plans or defined benefit plans of any type except ESOPs. Although SEPs are considered to be defined contribution plans, they are not qualified plans under IRC §401(a) (see IRC §408) and are not generally subject to the QDRO rules, at least for purposes of the IRC. Defined contribution plans (as well as defined benefit plans) may contain one or more deemed IRAs established under IRC §408(q), which presumably must be divided as IRAs (which are not subject to the QDRO rules) under IRC §408(d)(6). See Prop Reg §1.408(q)-1; see also 29 USC §1003(c).

§20.11 2. Defined Benefit Plans

∞ A defined benefit plan is one in which the benefits are ascertained by reference to factors specified in the plan, such as the employee's age at retirement, years of service at retirement, and highest income level achieved, rather than the value of an individual account. *Marriage of Bergman* (1985) 168 CA3d 742, 748 n4, 214 CR 661.

The highest income level achieved is often calculated by reference to the average or highest compensation over a specified period (e.g., three years immediately before retirement). The level of benefits from defined benefit plans, unlike that from defined contribution plans (see §20.10), does not depend on amounts contributed or on the performance of investments made by the plan trustee. Defined benefit plans generally do not include an individual account feature. On cash balance plans, see discussion in this section, below.

Employees usually receive annual statements of their promised "accrued benefit" payable at retirement age. Unless heavily subsidized, defined benefits are typically reduced by actuarial factors if taken before normal retirement age. The accruals to an individual within the plan are based on a formula specific to that plan and are generally expressed as a monthly annuity beginning at an early or normal retirement age. Benefits payable under most defined benefit plans are guaranteed (to the extent funding is available) by the Pension Benefit Guaranty Corporation. Exceptions to this rule include plans maintained by professional service employers (e.g., law firm and medical corporation plans) with no more than 25 active participants. 29 USC §1321(b)(13).

There have historically been three types of formulas applied in defined benefit plans to determine the amount of the monthly benefit payment:

- **Unit benefit formula.** The monthly benefit is determined by multiplying the years of service, the applicable compensation figure, and a factor determined by the employee's age at retirement.
- **Career average formula.** The monthly benefit is determined by taking a percentage of each year's compensation and then adding the resulting figures.
- **Fixed-dollar formula.** The monthly benefit is determined by multiplying a fixed dollar amount by the years of service.

A growing number of private companies, however, are transforming their defined benefit plans into "cash balance" plans. Although characterized as defined benefit plans, they have many of the features of defined contribution plans. Under a cash balance plan, the accrued benefit for each employee is expressed as a hypothetical lump-sum cash balance specific to that employee. Periodic "contributions" to

the cash balance account are credited based on a formula specified in the plan, e.g., a percentage of the employee's compensation. Earnings on the current balance will usually be deemed to accrue at the long-term treasury bond rate or some other rate specified in the plan. The employee is guaranteed that rate, regardless of the plan's actual earnings. Despite their defined contribution plan trappings, cash balance plans are defined benefit plans because the retirement that will be paid is predefined and thus independent of the actual investment experience of the trust.

Examples of defined benefit plans can be found among federal, state, and private plans, including, e.g., the Civil Service Retirement Plan (federal), the Public Employees' Retirement Plan (state), and various employer and union retirement plans (private). Defined benefit plans (as well as defined contribution plans) may contain one or more deemed IRAs established under IRC §408(q), which presumably must be divided as IRAs (which are not subject to the QDRO rules) under IRC §408(d)(6).

III. INITIAL STEPS

§20.12 A. Identify and Locate Plans

The first step in addressing retirement benefits in a marital action is to identify and locate all retirement plans in which the spouses have interests, whether or not vested.

Within 30 days after written request, the employee spouse is required to furnish to the nonemployee spouse, with respect to each employee benefit plan covering the employee spouse, the plan's name and the name, title, address, and telephone number of the plan's trustee, administrator, or agent for service of process. If necessary, the employee spouse must obtain the information from the plan administrator. Fam C §2062(c). In an ERISA-covered plan, the plan administrator's cooperation can be enforced through the penalty provisions of 29 USC §1132(c) (up to \$110 (indexed) per day for unexcused failure to comply with valid information request within 30 days). Prospective alternate payees have the same right to information as a participant. See *QDROs: The Division of Pensions Through Qualified Domestic Relations Orders* §2-1 (U.S. Dept. of Labor).

Alternatively, the information may be sought from the employer or plan sponsor, either by informal request, authorization by the

employee, or a deposition subpoena for production of business records. For deposition subpoena discussion and forms, see Practice Under the California Family Code: Dissolution, Legal Separation, Nullity §§13.22-13.25 (Cal CEB Annual). Note that such discovery orders may be subject to ERISA preemption to the extent that they seek plan-specific information.

§20.13 B. Contact Plan Administrator

The attorney should telephone each plan administrator and speak to the person who handles divorce matters. The person's name and address can sometimes be found in the summary plan description (SPD), if there is one. The attorney should be prepared to provide the names of the employee and the party whom the attorney represents. A social security number or employee identification number may be requested. Note that although some plans may treat such a call from the nonemployee spouse's attorney as a notice of adverse interest (see §20.14) and put a hold on the employee's file or benefit, anticipating a letter confirming the nonemployee spouse's claim, others may not.

The attorney should ask general questions about the plan, but the plan administrator may be unwilling to provide information regarding a particular employee without the employee's written authorization, a subpoena, or similar basis for revealing private information. The attorney should in all cases request the SPD and general informational pamphlets about the plan. Most plans will send these to an attorney on request. A copy of the plan's QDRO procedures should also be obtained at this time, if available. ERISA-covered retirement plans are required to have written QDRO procedures. See 29 USC §1056(d)(3)(G)(ii).

§20.14 C. Notice of Adverse Interest

Under Fam C §755, a notice of adverse interest may be served on a retirement plan (or the plan sponsor in the case of an unfunded nonqualified plan) to give notice that a nonemployee spouse claims an interest in payments to be made under the plan. Such notice may be given with respect to all types of retirement plans, including those governed by ERISA. Although it is not clear whether ERISA preempts the statutory procedure for a notice of adverse interest (for a case in which the court held that it does not, see *Marriage*

of *Baker* (1988) 204 CA3d 206, 218, 251 CR 126), plans typically do not object to this procedure.

If a retirement plan will not be joined as a party at the commencement of a marital action, a notice of adverse interest may help to protect the nonemployee spouse's interest in benefits to be paid under the plan and should be served. A notice of adverse interest may be served even before an action is commenced, when protection is desired during that period. Depending on the plan's QDRO procedures, it may be prudent to also obtain an injunctive order, e.g., prohibiting the plan from honoring an election by the employee spouse that would diminish the nonemployee spouse's benefits in the plan. See *Marriage of Baker, supra*. California joinder rules appear to make such an order enforceable against a plan only if it is a party to the action (see Fam C §2060(b)); as a practical matter, however, because plans have a fiduciary duty to beneficiaries as well as to participants (ERISA §404(a)(1); see 29 USC §1104(a)) and nonemployee spouses under a qualifying order (QDRO) are considered beneficiaries (ERISA §206(d)(3)(J); see 29 USC §1056(d)(3)(J)), most private plans, even if unjoined, will likely freeze the benefits to protect the prospective beneficiary on receipt of such a pleading. In addition, Cal Rules of Ct 5.106 provides that the court may grant injunctive relief against a person who is acting as a trustee, agent, custodian, or similar fiduciary with respect to any property subject to court disposition in a marital dissolution proceeding. There is no requirement of joinder for injunctive relief under such circumstances. See *Schnabel v Superior Court* (1993) 21 CA4th 548, 552, 26 CR2d 169. See also Fam C §§2045, 2050-2051.

For private plans, without a notice of adverse interest or an order for joinder (see §20.15), the nonemployee spouse may have no recourse against a plan that pays the entire community interest to the employee spouse either (1) before the court determines the parties' respective interests in pension benefits or (2) after the determination and before service of an effective QDRO. This risk applies to any plan that does not need spousal consent to distribute benefits in a lump sum (such as a profit-sharing plan); and to all plans after a "status dissolution" is granted. Although there is case law to the effect that if a plan receives a notice of adverse interest or an order for joinder and nonetheless pays the community interest to the employee spouse the plan is liable to and must pay the nonem-

ployee spouse that portion of the benefits awarded to him or her by court order (see *Marriage of Baker* (1988) 204 CA3d 206, 215, 251 CR 126), that case law should not be relied on to protect benefits in any ERISA-covered plan. 29 USC §1056(d)(3)(I). With regard to those plans, however, if the plan's QDRO procedures contain "freeze" provisions, once the freeze requirements have been satisfied (most are triggered by a notice of adverse interest), the plan is bound to follow them under ERISA. 29 USC §1104(a)(1)(D). Otherwise, it may be necessary to obtain a temporary injunction or a court order under the QDRO rules restraining the plan from paying out benefits before receipt of an order confirming the nonemployee spouse's interest. A public plan also may or may not be affected by notice or joinder, depending on the applicable laws and administrative policy.

There is no Judicial Council form for a notice of adverse interest. The attorney should prepare a letter that clearly identifies the retirement plan, the participant (and his or her employee or social security number, if known), and the party claiming the interest by virtue of his or her marriage to the participant. The letter should indicate that an interest is being claimed in the plan and should cite Fam C §755 as the authority for the notice. The notice should normally be directed to and served on the plan administrator (usually the sponsor), and service should be effected in a manner that will facilitate proof of receipt, i.e., personal service, service by mail and acknowledgment of receipt, or service by mail and return receipt (signed by the addressee only). Many plans will execute and return an acknowledgment of receipt.

§20.15 D. Joinder

Under California law, an order or a judgment is not enforceable against a retirement plan unless the plan has been joined as a party to the proceeding. Fam C §2060(b). For this reason, state or governmental pension plans, private retirement plans not subject to ERISA, and noncollecting church plans should always be joined as a party at the commencement of a marital action. To deter such a plan from paying benefits to the employee spouse before the action is commenced, counsel should serve a notice of adverse interest (see §20.14) on the plan. If the member is in pay status, tailor the notice or restraining order to a portion of the benefit being paid so that

a retiree's income stream is not interrupted by an overly broad demand, particularly if the retiree is paying support or sharing the allowance with the other party.

In the case of private pension plans governed by ERISA, however, the rules are different. Such private plans need not be joined as a party to the marital action to be bound by a restraining order (see §20.14) or a QDRO dividing a community interest in the plan, as long as the order meets the requirements for a QDRO. See 29 USC §1056(d)(3)(A); *Marriage of Baker* (1988) 204 CA3d 206, 218, 251 CR 126 (discussed in §20.14). Joinder of the private pension plan may, however, protect the nonemployee spouse's interest in the pension benefits, pending issuance of a QDRO, in the same manner as a notice of adverse interest. If an ERISA plan is joined, the family law attorney may have to face a petition for removal of the action to federal court at some point in the proceedings. If the attorney chooses not to join an ERISA plan at the commencement of the action and is not otherwise satisfied from the plan's QDRO procedures that the client's interest is protected until a QDRO is in place, the attorney should serve a notice of adverse interest on the plan to help protect the nonemployee spouse as far as possible until the plan is joined or a QDRO is issued and served.

Do not attempt to join federal retirement plans such as those governed by the military retirement system, the Civil Service Retirement System, or the Federal Employees Retirement System. A federal plan that the attorney attempts to join as a party may move to quash service of the summons or initiate proceedings in federal court to remove the cause of action asserted against it, or even the entire action, from the state court. Fortunately, joinder of a federal plan appears to be unnecessary under statutes that provide for the division of a community interest in federal pension benefits. When a nonemployee spouse has an interest in federal pension benefits, however, counsel should serve a notice of adverse interest on the plan to protect that interest until an order dividing the benefits can be issued and served on the plan.

A nonresident pension plan may be joined as a party to a marital action only if the state court can obtain personal jurisdiction over the plan, *i.e.*, the plan has sufficient minimum contacts with California to justify California's exercise of personal jurisdiction over it. In many cases, however, nonresident pension plans will satisfy the minimum contacts requirement and be subject to joinder.

On joinder procedure, including discussion and forms, see Practice Under the California Family Code: Dissolution, Legal Separation, Nullity §§12.15–12.25 (Cal CEB Annual).

E. Discovery

§20.16 1. Suggested Minimum Information

Suggested minimum information for all plans includes the following:

- The Summary Plan Description or an equivalent explanation of the terms of the plan;
- The Plan Document and all amendments, if any;
- Plan QDRO procedures and model orders, if available;
- Explanations of any special retirement offers or programs (*e.g.*, window benefits), with printouts of calculations; and
- Employee benefit records.

Suggested additional minimum information for defined contribution plans includes the following:

- A statement of account as of the date of marriage;
- Statements of account on and after the date of separation;
- Loan and other postmarriage withdrawal information; and
- Beneficiary designations.

Suggested additional minimum information for defined benefit plans includes the following:

- The latest accrued benefit statement.
- Plan data used in calculation of the benefit (*e.g.*, years of service, compensation).
- When applicable, records necessary to trace the community interest into a successor plan or annuity. (If the employee participated during marriage in a plan that is now terminated, plan assets may have been frozen or transferred to a successor plan or an annuity may have been purchased on behalf of individuals in the plan.)

AUTHORIZATION FOR THE RELEASE OF RECORDS

I, _____, SSN _____
hereby authorize the Plan Administrator for _____,
(Employer), located at _____

_____ or its agents, to release records regarding my retirement benefits and health insurance related information to the attorneys and/or parties referenced below. The date of marriage is _____; the date of separation is _____.

Such information shall include but not be limited to the statements of my interest at date of marriage, date of separation and current; as well as QDRO procedures, Summary Plan Description(s) and model order(s), along with the name and address of the Plan Administrator.

Further requests should be anticipated as necessary for the preparation of orders in this matter.

Dated: _____

(Participant's Signature)

<p>Counsel for Participant (_____)</p> <p>Name: _____</p> <p>Address: _____</p> <p>_____</p>
<p>Counsel for Alternate Payee (_____)</p> <p>Name: _____</p> <p>Address: _____</p> <p>_____</p>

WILLIAM F. WHITING**+
ANDREW ROSS**+
R. ANN FALLON**+
GREGORY C. ABEL**+

KIMBERLY V. CAMPBELL
STACEY STEVENS
COURTNEY O'HAGAN

WHITING, FALLON & ROSS, LLP
MATRIMONIAL ATTORNEYS
1500 NEWELL AVENUE, 5th FLOOR
WALNUT CREEK, CALIFORNIA 94596-5193

Telephone (925) 296-6000
Facsimile (925) 296-6001
E-mail:whiting@disso.com

*Certified Specialist, Family Law
The State Bar of California
Board of Legal Specialization

†Fellow, American Academy of
Matrimonial Lawyers

✦Fellow, International Academy of
Matrimonial Lawyers

December 17, 2007

FC §§ 2053 and 2062A(C) Request

Re:

Dear Counsel:

By this letter we are requesting identifying information sufficient for our office to obtain discovery and give notice of a claim of interest on behalf of our client, _____, regarding your client's insurance and retirement benefits.

Pursuant to Family Code section 2053, your insured policyholder should furnish us the name, title and address of the insurer for any life, disability, health or other policy whether or not associated with employment under which your client or any family member is covered.

Pursuant to Family Code section 2062(c), your client should furnish us, as to each employee benefit plan covering the employee, the name of the plan, the name, title, address, and telephone number of the plan's trustee, administrator, or agent for service of process. If necessary, the employee shall obtain the information from the plan or plan sponsor.

This information is to be provided within thirty (30) days from the date of this letter. Thank you for having your client sign the enclosed General Release which we will forward to the Providers once we receive the information as to the identity of these employer-provided benefit plans.

Very truly yours,

R. Ann Fallon

RAF:
Enclosure

WILLIAM F. WHITING*+
ANDREW ROSS*+
R. ANN FALLON*+
GREGORY C. ABEL*+

KIMBERLY V. CAMPBELL
STACEY STEVENS
COURTNEY O'HAGAN

WHITING, FALLON & ROSS, LLP
MATRIMONIAL ATTORNEYS
1500 NEWELL AVENUE, 5TH FLOOR
WALNUT CREEK, CALIFORNIA 94596-5193

Telephone (925) 296-6000
Facsimile (925) 296-6001
E-mail:whiting@disso.com

*Certified Specialist, Family Law
The State Bar of California
Board of Legal Specialization

+Fellow, American Academy of
Matrimonial Lawyers

+Fellow, International Academy of
Matrimonial Lawyers

December 18, 2007

Attorney Name: _____

Address: _____

RE: Marriage of _____
Name of Plan(s): _____
Employee: _____
Date of Birth: _____
Social Security No.: _____

Dear Benefits Staff:

Please be advised by this letter that our client, _____, has an interest as an Alternate Payee in the above-named employee's retirement and survivor benefits through your plan. For your records, Alternate Payee's name address and relevant information is as follows:

_____ SSN: _____

_____ DOB: _____

No distribution should be made of any benefits in this matter prior to your receipt of a court order distributing this asset between the parties pursuant to a Qualified Domestic Relations Order. See California Family Code section 755. At this time, we request you forward copies of any Plan booklets, Summary Plan Descriptions(s) and QDRO procedures for all Employer provided Plans in which this Employee participates.

Very truly yours,

WHITING, FALLON & ROSS

R. Ann Fallon

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Margaret Walton 666 Widget Lane San Francisco, CA 94102 TELEPHONE NO.: (415) 222-6000 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): In Propria Persona	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA STREET ADDRESS: 751 Pine Street MAILING ADDRESS: P.O. Box 911 CITY AND ZIP CODE: Martinez, California 94553 BRANCH NAME:	
MARRIAGE OF PETITIONER: MARGARET WALTON RESPONDENT: WALT WALTON	
<div style="text-align: center;">JUDGMENT</div> <input checked="" type="checkbox"/> DISSOLUTION <input type="checkbox"/> LEGAL SEPARATION <input type="checkbox"/> NULLITY <input checked="" type="checkbox"/> Status only <input type="checkbox"/> Reserving jurisdiction over termination of marital or domestic partnership status <input type="checkbox"/> Judgment on reserved issues Date marital or domestic partnership status ends:	CASE NUMBER: D07-02572

1. This judgment contains personal conduct restraining orders modifies existing restraining orders.
 The restraining orders are contained on page(s) _____ of the attachment. They expire on (date): _____
2. This proceeding was heard as follows: Default or uncontested By declaration under Family Code section 2336
 Contested
 - a. Date: _____ Dept.: _____ Room: _____
 - b. Judicial officer (name): _____ Temporary judge
 - c. Petitioner present in court Attorney present in court (name): _____
 - d. Respondent present in court Attorney present in court (name): _____
 - e. Claimant present in court (name): _____ Attorney present in court (name): _____
 - f. Other (specify name): _____
3. The court acquired jurisdiction of the respondent on (date): 2/14/07
 - a. The respondent was served with process.
 - b. The respondent appeared.

THE COURT ORDERS, GOOD CAUSE APPEARING

4. a. Judgment of dissolution is entered. Marital or domestic partnership status is terminated and the parties are restored to the status of single persons
 - (1) on (specify date): [DATE]
 - (2) on a date to be determined on noticed motion of either party or on stipulation.
- b. Judgment of legal separation is entered.
- c. Judgment of nullity is entered. The parties are declared to be single persons on the ground of (specify): _____
- d. This judgment will be entered nunc pro tunc as of (date): _____
- e. Judgment on reserved issues.
- f. The petitioner's respondent's former name is restored (specify): _____
- g. Jurisdiction is reserved over all other issues, and all present orders remain in effect except as provided below.
- h. This judgment contains provisions for child support or family support. Each party must complete and file with the court a *Child Support Case Registry Form* (form FL-191) within 10 days of the date of this judgment. The parents must notify the court of any change in the information submitted within 10 days of the change, by filing an updated form. The *Notice of Rights and Responsibilities-Health Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order* (form FL-192) is attached.



CASE NAME (Last name, first name of each party): WALTON, Margaret and Walt	CASE NUMBER: D07-02572
---	---------------------------

4. (Cont'd.)

- i. A settlement agreement between the parties is attached.
 - j. A written stipulation for judgment between the parties is attached.
 - k. The children of this marriage or domestic partnership.
 - (1) The children of this marriage or domestic partnership are:

Name	Birthdate
------	-----------
 - (2) Parentage is established for children of this relationship born prior to the marriage or domestic partnership.
 - l. Child custody and visitation are ordered as set forth in the attached
 - (1) settlement agreement, stipulation for judgment, or other written agreement.
 - (2) *Child Custody and Visitation Order Attachment* (form FL-341).
 - (3) *Stipulation and Order for Custody and/or Visitation of Children* (form FL-355).
 - (4) other (specify):
 - m. Child support is ordered as set forth in the attached
 - (1) settlement agreement, stipulation for judgment, or other written agreement.
 - (2) *Child Support Information and Order Attachment* (form FL-342).
 - (3) *Stipulation to Establish or Modify Child Support and Order* (form FL-350).
 - (4) other (specify):
 - n. Spousal or partner support is ordered as set forth in the attached
 - (1) settlement agreement, stipulation for judgment, or other written agreement.
 - (2) *Spousal, Partner, or Family Support Order Attachment* (form FL-343).
 - (3) other (specify):
- NOTICE:** It is the goal of this state that each party will make reasonable good faith efforts to become self-supporting as provided for in Family Code section 4320. The failure to make reasonable good faith efforts may be one of the factors considered by the court as a basis for modifying or terminating spousal or partner support.
- o. Property division is ordered as set forth in the attached
 - (1) settlement agreement, stipulation for judgment, or other written agreement.
 - (2) *Property Order Attachment to Judgment* (form FL-345).
 - (3) other (specify):
 - p. Other (specify): See attachment 4.p.

Each attachment to this judgment is incorporated into this judgment, and the parties are ordered to comply with each attachment's provisions.

Jurisdiction is reserved to make other orders necessary to carry out this judgment.

Date:

5. Number of pages attached: _____

JUDICIAL OFFICER
 SIGNATURE FOLLOWS LAST ATTACHMENT

NOTICE

Dissolution or legal separation may automatically cancel the rights of a spouse or domestic partner under the other spouse's or domestic partner's will, trust, retirement plan, power of attorney, pay-on-death bank account, transfer-on-death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel the rights of a spouse or domestic partner as beneficiary of the other spouse's or domestic partner's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions.

A debt or obligation may be assigned to one party as part of the dissolution of property and debts, but if that party does not pay the debt or obligation, the creditor may be able to collect from the other party.

An earnings assignment may be issued without additional proof if child, family, partner, or spousal support is ordered.

Any party required to pay support must pay interest on overdue amounts at the "legal rate," which is currently 10 percent.

3 **4.p. OTHER:**

4 Each party (**insert party names and addresses**) is provisionally awarded without
5 prejudice, and subject to adjustment by Domestic Relations Order, a separate interest equal to one-
6 half of all benefits accrued or to be accrued under the Plan (**it is important to name each Plan**
7 **individually**) as a result of employment of the other party during the marriage/domestic
8 partnership prior to the date of separation. In addition, pending further Notice, the Plan shall, as
9 allowed by law, continue to treat the parties as married/domestic partners for purposes of survivor
10 rights/benefits available under the Plan to the extent necessary to provide for payment of an
11 amount equal to that separate interest or all of such survivor benefit if at the time of the death of
12 the Participant, there is no other eligible recipient of such survivor benefit.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Retirement Allowance Estimate Request

(888) CalPERS (225-7377) • Telecommunications Device for the Deaf: (916) 795-3240

This is not an application for retirement. This is a request for an estimate of potential future retirement benefit amounts that will assist you with your financial planning. See the back of this form for detailed instructions.

Section 1

Provide the address you would like your estimated retirement allowance sent to.

Information About You

Name of Member (First Name, Middle Initial, Last Name) _____ Social Security Number _____

Birthdate (mm/dd/yyyy) _____ Daytime Phone _____ Evening Phone _____

Address _____

City _____ State _____ ZIP _____

Section 2

Not all CalPERS members are eligible for industrial Disability retirement. Contact your Personnel Office for eligibility information.

Retirement Information

Type of estimate for your retirement allowance Service Disability Industrial Disability

Employer _____ Projected Retirement Date (mm/dd/yyyy) _____

Are you a member of another retirement system that has established reciprocity with CalPERS? No Yes

Name of System _____ Estimate Final Compensation Amount _____

Final Compensation Period

Do you have any final compensation period higher than the last consecutive 12 or 36 months?

No Yes, from _____ to _____

Beginning Date (mm/dd/yyyy) Ending Date (mm/dd/yyyy)

If your membership date is January 1, 2002, or later, the amount of your Temporary Annuity cannot exceed the estimated amount of your Social Security benefit at the age designated in this election.

Temporary Annuity - Complete the information below to request a Temporary Annuity estimate.

For an additional Temporary Annuity Allowance, you elect to reduce your monthly allowance for life. No Yes

If you first became a member on January 1, 2002, or later, you elect to receive Temporary Annuity until age _____ in the amount of \$ _____ per month.

OR

If you first became a member prior to January 1, 2002, you elect to receive Temporary Annuity until age _____ in the amount of \$ _____ per month.

Section 3

Individual Lifetime Beneficiary (2, 2W, 3, 3W)

Name of Beneficiary _____ Relationship to You _____ Date of Birth (mm/dd/yyyy) _____

Section 4

Information About Your Survivor Continuance

Do you have an eligible survivor? No Yes

Section 5

CalPERS will provide an estimate for standard Options 1, 2, 2W, 3, 3W and Unmodified Allowance. If these do not meet your needs, you may request ONE of the approved Option 4 types listed at right.

Your Option 4 Retirement Options

Option 2W & Option 1 combined Option 3W & Option 1 combined

Specific Percentage to Beneficiary _____ % Specific Dollar Amount to Beneficiary \$ _____

Reduced Allowance _____ through _____

Multiple Lifetime Beneficiaries _____

Reduced Allowance Upon Death of Member or Beneficiary \$ _____

Mail to:

CalPERS Member Services Division • P.O. Box 942717, Sacramento, California 94229-2717

Instructions for Completing the Retirement Allowance Estimate Request Form

(888) CalPERS (225-7377) • Telecommunications Device for the Deaf: (916) 795-3240

Section 1

Information About You

Name: Provide your first name, middle initial, and last name.

Social Security Number: Provide your Social Security Number.

Birth Date: Provide month, day, and complete year.

Mailing Address: Provide the mailing address where you want to receive your estimated retirement allowance.

Telephone Number(s): Provide your home and/or work number in case we need to reach you.

Section 2

Information About Your Retirement Estimate

Projected Retirement Date: List your projected retirement date. The minimum retirement age for service retirement for most CalPERS members is age 50 with five years of CalPERS service credit. State members under the Second Tier retirement plan must be 55 years old with ten years of service credit. There are some exceptions to these requirements.

Type of Estimate for Retirement Allowance: Select the type of retirement estimate you wish to receive. Not all CalPERS members are eligible for an Industrial Disability retirement. Please contact your Personnel Office for information on eligibility.

Other California Public Retirement Systems: Reciprocity is an agreement CalPERS has with many California public retirement systems that allows movement among public employers within a specified time limit, without losing valuable retirement and related benefit rights. For additional information please refer to the When You Change Retirement Systems booklet.

Final Compensation Period: Your final compensation is the highest average salary during any consecutive 12 or 36 month period. Which compensation period we use depends on your employer's contract with CalPERS. To calculate the final compensation, CalPERS takes your last day on payroll, and goes back 12 or 36 consecutive months. ONLY enter information for the final compensation period if you wish to specify a period of time other than the last 12 or 36 consecutive months before your estimated retirement date.

Temporary Annuity is an additional monthly income you may choose to augment your pension from CalPERS. If you take a disability retirement, a Temporary Annuity is not available. The benefit is payable from your retirement date to a specific age that you select. If your CalPERS membership date is prior to 01/01/2002, you may choose age 59½ or any whole age from 60-68. If your CalPERS membership date is on or after 01/01/2002, age 62-70. You can also name the dollar amount you wish to receive (Certain limitations apply, please refer to the Temporary Annuity booklet). If your CalPERS membership date is on or after 01/01/2002 the amount of Temporary Annuity cannot exceed the amount expected from Social Security at the age specified, provided you made contributions to Social Security while employed with a CalPERS employer. It is important to note that this benefit is not free. Your CalPERS monthly lifetime retirement allowance is reduced to pay for your Temporary Annuity. For additional information, please refer to the Temporary Annuity booklet.

Section 3

Individual Lifetime Beneficiary (2, 2W, 3, 3W)

A beneficiary is any person(s) you designate to receive a benefit after your death.

If you would like to provide a lifetime monthly benefit to a beneficiary, we need their date of birth.

Relationship to You: A beneficiary can be a spouse, child, friend, etc.

Beneficiary Birth Date: Provide month, day, and complete year.

Section 4

Information About Your Survivor Continuance

Survivor Continuance is an employer-paid benefit payable to an eligible dependent upon your death. To have a dependent who is eligible for Survivor Continuance you must be married or have a domestic partner legally recognized in California on and at least one year prior to your tentative retirement date; have an unmarried child who is under age 18 or disabled; or have a parent dependent on you for at least half of their support.

Section 5

Your Retirement Options

CalPERS will provide you an estimate for the standard options (1, 2, 2W, 3, 3W). If none of these meets your needs, you may request ONE of the Option 4 allowances, as long as the amount to your beneficiary(s) is not more than the benefit provided under Option 2W. For additional information please refer to the Retirement Option 4 booklet.



CalPERS Non-Member Retirement Allowance Estimate Request

The purpose of this form is to request an estimate of potential future benefit amounts that will assist you with your financial planning. **This form is not an application for retirement.**

Part 1 - Applicant Information (please print)

Name	Social Security Number	Date of Birth	
Mailing Address	City	State	ZIP
Home Phone	Work Phone		

Part 2 - CalPERS Member Information

Member's Social Security Number	Member's Name
Date of Marriage	Date of Final Dissolution of Marriage or Legal Separation

Part 3 - Estimate Information

Projected Retirement Date

Part 4 - Beneficiary Information

Relationship	Date of Birth
--------------	---------------

Part 5 - Other Option Types Available (Option 4)

CalPERS will provide you an estimate for the standard options. If these do not meet your needs, you may request ONE of the approved Option 4 types listed below.

- Option 2W & Option 1 combined
- Option 3W & Option 1 combined
- Multiple Lifetime Beneficiaries: (birthdates) _____
- Reduced Allowance for Fixed Period of Time: \$ _____ .00 or _____ %; Duration: _____
- Specific % to Beneficiary: _____ %
- Specific \$ Amount to Beneficiary: \$ _____ .00

Instructions for Completing Form

Parts 1, 2, and 3 must be completed to process your estimate request. If you have any questions, please call the number listed on the front of this form.

Part 1 – Applicant Information

Name: Provide your first, middle initial, and last name.

Social Security Number: Provide your Social Security number.

Birth Date: Provide month, day, and complete year.

Mailing Address: Provide the mailing address where you wish to receive your estimated retirement allowance.

Telephone Number(s): Provide us your home and/or work number in case we need to reach you.

Part 2 – CalPERS Member Information

Enter the name and Social Security number of the member whose account was split in the community property settlement. Enter the date of marriage to the member and the date your married status terminated (this is the date the court determined that you were unmarried and could legally remarry).

Part 3 – Estimate Information

Projected Retirement Date: List your projected retirement date.

Part 4 – Beneficiary Information

A beneficiary is any person(s) you designate to receive a benefit after your death. If you would like to provide a lifetime monthly benefit to a beneficiary, we will need their date of birth.

Beneficiary Birth Date: Provide month, day, and complete year.

Relationship to You: A beneficiary might be a spouse, child, friend, etc.

Part 5 – Other Option Types Available (Option 4)

Under Option 4 the law allows you to design the type of coverage you wish to provide, as long as the amount to your beneficiary(s) is not more than the benefit provided under Option 2W. For additional information please refer to the Retirement Option 4 publication (PERS-PUB-18).

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Margaret Walton 666 Widget Lane San Francisco, CA 94102 TELEPHONE NO. (Optional): (415) 222-6000 FAX NO. (Optional) E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): In Propria Persona	FOR COURT USE ONLY CASE NUMBER D02-02572
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS 400 McAllister Street, 4th Floor MAILING ADDRESS: CITY AND ZIP CODE San Francisco, A 94102 BRANCH NAME:	
MARRIAGE OF PETITIONER: MARGARET WALTON RESPONDENT: WALT WALTON	
CLAIMANT: CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM	
SUMMONS (JOINDER)	

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

¡AVISO! Usted ha sido demandado. El tribunal puede decidir contra Ud. sin audiencia a menos que Ud. responda dentro de 30 días. Lea la información que sigue.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response or pleading, if any, may be filed on time.

Si Usted desea solicitar el consejo de un abogado en este asunto, debería hacerlo inmediatamente, de esta manera, su respuesta o alegación, si hay alguna, puede ser registrada a tiempo.

1. TO THE PETITIONER RESPONDENT CLAIMANT
 A pleading has been filed under an order joining (name of claimant):

as a party in this proceeding. If you fail to file an appropriate pleading within 30 days of the date this summons is served on you, your default may be entered and the court may enter a judgment containing the relief requested in the pleading, court costs, and such other relief as may be granted by the court, which could result in the garnishment of wages, taking of money or property, or other relief.

2. TO THE CLAIMANT EMPLOYEE BENEFIT PLAN
 A pleading on joinder has been filed under the clerk's order joining (name of employee benefit plan):
 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

as a party claimant in this proceeding. If the employee benefit plan fails to file an appropriate pleading within 30 days of the date this summons is served on it, a default may be entered and the court may enter a judgment containing the relief requested.

Dated: _____

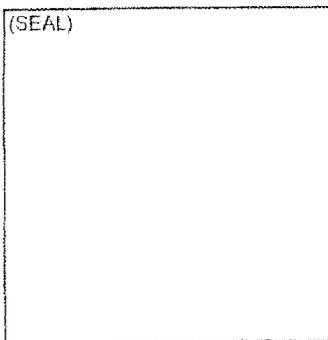
Clerk, By _____, Deputy

3. NOTICE TO THE PERSON SERVED: You are served

- a. As an individual.
 b. As (or on behalf of) the person sued under the fictitious name of:

- c. On behalf of:
 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
 Under: CCP 416.10 (Corporation) CCP 416.60 (Minor)
 CCP 416.20 (Defunct Corporation) CCP 416.70 (Incompetent)
 CCP 416.40 (Association or Partnership) CCP 416.90 (Individual)
 Other: FC 2062 (Employee Benefit Plan)

- d. By personal delivery on (date): _____



PROOF OF SERVICE-SUMMONS (JOINDER)

(Use separate proof of service for each person served)

- 1. I served the
a. Summons and (1) Request for Joinder of Employee Benefit Plan and Order, Pleading on Joinder-Employee Benefit Plan, blank Notice of Appearance and Response of Employee Benefit Plan
(2) Notice of Motion and Declaration for Joinder (3) Order re Joinder
(4) Pleading on Joinder (specify title):
(5) Other:
b. On (name of party or claimant):
c. By serving (1) Party or claimant. (2) Other (name and title or relationship to person served):
d. By delivery at home business (1) Date of: (2) Time of: (3) Address:
e. By mailing (1) Date of: (2) Place of:

- 2. Manner of service: (check proper box)
a. Personal service. By personally delivering copies. (CCP 415.10)
b. Substituted service on corporation, unincorporated association (including partnership), or public entity. By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))
c. Substituted service on natural person, minor, incompetent, or candidate. By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) (Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)
d. Mail and acknowledgment service. By mailing (by first-class mail or airmail) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) (Attach completed acknowledgment of receipt.)
e. Certified or registered mail service. By mailing to address outside California (by registered or certified airmail with return receipt requested) copies to the person served. (CCP 415.40) (Attach signed return receipt or other evidence of actual delivery to the person served.)
f. Other (specify code section):
Additional page is attached.

- 3. The notice to the person served (item 3 on the copy of the summons served) was completed as follows (CCP 412.30, 415.10 and 474):
a. As an individual.
b. As the person sued under the fictitious name of:
c. On behalf of:
Under: CCP 416.10 (Corporation) CCP 416.60 (Minor)
CCP 416.20 (Defunct Corporation) CCP 416.70 (Incompetent)
CCP 416.40 (Association or partnership) CCP 416.90 (Individual)
FC 2062 (Employee Benefit Plan)
d. By personal delivery on (date):

4. At the time of service I was at least 18 years of age and not a party to this action.

5. Fee for service: \$

6. Person serving

- a. Not a registered California process server.
b. Registered California process server.
c. Exempt from registration under Bus. & Prof. Code 22350(b).
d. California sheriff, marshal, or constable.
e. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on (date): at (place): California.

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct and that this certificate is executed on (date): at (place): California.

(Signature)

(Signature)

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar no., and address)</p> <p>Margaret Walton 666 Widget Lane San Francisco, CA 94102</p> <p>TELEPHONE NO. (415) 222-6000 FAX NO. (Optional)</p> <p>E-MAIL ADDRESS (Optional)</p> <p>ATTORNEY FOR (Name) In Propria Persona</p>	<p>FOR COURT USE ONLY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO</p> <p>STREET ADDRESS: 400 McAllister Street, 4th Floor</p> <p>MAILING ADDRESS:</p> <p>CITY AND ZIP CODE San Francisco, CA 94102</p> <p>BRANCH NAME:</p>	
<p>MARRIAGE OF</p> <p>PETITIONER: MARGARET WALTON</p> <p>RESPONDENT: WALT WALTON</p>	
<p>CLAIMANT: CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM</p>	
<p>REQUEST FOR JOINDER OF EMPLOYEE BENEFIT PLAN AND ORDER</p>	<p>CASE NUMBER: D02-02572</p>

TO THE CLERK

1. Please join as a party claimant to this proceeding (specify name of employee benefit plan):
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

2. The pleading on joinder is submitted with this application for filing.

Dated: / / 06

(SIGNATURE OF ATTORNEY FOR)
 PETITIONER RESPONDENT

MARGARET WALTON
(TYPE OR PRINT NAME)

ORDER OF JOINDER

3. IT IS ORDERED

- a. The claimant listed in item 1 is joined as a party claimant to this proceeding.
- b. The pleading on joinder be filed.
- c. Summons be issued.
- d. Claimant be served with a copy of the pleading on joinder, a copy of this request for joinder and order, the summons, and a blank *Notice of Appearance and Response of Employee Benefit Plan* (form FL-374).

Dated: Clerk, By _____ Deputy

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Margaret Walton 666 Widget Lane San Francisco, CA 94102</p> <p>TELEPHONE NO.: (415) 222-6000 FAX NO. (Optional):</p> <p>E-MAIL ADDRESS (Optional):</p> <p>ATTORNEY FOR (Name): In Propria Persona</p>	<p>FOR COURT USE ONLY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street, 4th Floor MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:</p>	
<p>MARRIAGE OF PETITIONER: MARGARET WALTON RESPONDENT: WALT WALTON</p>	
<p>CLAIMANT: CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM</p>	
<p>PLEADING ON JOINDER - EMPLOYEE BENEFIT PLAN</p>	<p>CASE NUMBER: D02-02572</p>

TO THE CLAIMANT: You have been joined as a party claimant in this proceeding because an interest is claimed in the employee benefit plan that is or may be subject to disposition by this court. The party who obtained the order for your joinder declares:

1. Information concerning the employee covered by the plan:
 - a. Name: Walt Walton
 - b. Employer (name): Employer
 - c. Name of labor union representing employee:
 - d. Employee identification number: See transmittal to Plan
 - e. Other (specify): DOB: See transmittal to Plan

2. Petitioner's
 - a. Attorney (name, address and telephone number):

 - b. Address and telephone number, if unrepresented by an attorney:
 66 Widget Lane
 San Francisco, CA 94102
 Telephone: (415) 222-6000

3. Respondent's
 - a. Attorney (name, address and telephone number):
 Counsel:
 Address:
 Telephone:

 - b. Address and telephone number, if unrepresented by an attorney:

PETITIONER:	CASE NUMBER:
RESPONDENT:	D02-02572

4. Petition for dissolution and response states

- a. Date of marriage: 6/20/78
- b. Date of separation: 1/3/04

5. Response states

- a. Date of marriage: 6/20/78
- b. Date of separation: 11/01/03

6. Judgment

- a. has not been entered
- b. was entered on (date) :
 - (1) and disposes of each spouse's interest in the employee benefit plan.
 - (2) and does not dispose of each spouse's interest in the employee benefit plan.

7. The following relief is sought:

- a. An order determining the nature and extent of both employee and nonemployee spouse's interest in employee's benefits under the plan.
- b. An order restraining claimant from making benefit payments to employee spouse pending the determination and disposition of nonemployee spouse's interest, if any, in employee's benefits under the plan.
- c. An order directing claimant to notify nonemployee spouse when benefits under the plan first become payable to employee.
- d. An order directing claimant to make payment to nonemployee spouse of said spouse's interest in employee's benefits under the plan when they become payable to employee.
- e. Other (specify) :

This pleading constitutes notice under Family Code Section 755 of the non-employee spouse's claim to benefits under the Plan, including survivor benefits. Payment of benefits to the employee will not, therefore, discharge the plan from the non-employee's claim. In Re Marriage of Baker (1988) 204 Cal.App.3d 206.

f. Such other orders as may be appropriate.

Dated: / /06

 (SIGNATURE OF ATTORNEY FOR)
 PETITIONER RESPONDENT

 (TYPE OR PRINT NAME)

PROBATE CODE § 5000

(a) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is not invalid because the instrument does not comply with the requirements for execution of a will, and this code does not invalidate the instrument.

(b) Included within subdivision (a) are the following:

(1) A written provision that money or other benefits due to, controlled by, or owned by a decedent before death shall be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(2) A written provision that money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand.

(3) A written provision that any property controlled by or owned by the decedent before death that is the subject of the instrument shall pass to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(c) Nothing in this section limits the rights of creditors under any other law. (Ad Stats 1990, C 79)

PROBATE CODE § 5600

(a) Except as provided in subdivision (b), a nonprobate transfer to the transferor's former spouse, in an instrument executed by the transferor before or during the marriage, fails if, at the time of the transferor's death, the former spouse is not the transferor's surviving spouse as defined in Section 78, as a result of the dissolution or annulment of the marriage. A judgment of legal separation that does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(b) Subdivision (a) does not cause a nonprobate transfer to fail in any of the following cases:

(1) The nonprobate transfer is not subject to revocation by the transferor at the time of the transferor's death.

(2) There is clear and convincing evidence that the transferor intended to preserve the nonprobate transfer to the former spouse.

(3) A court order that the nonprobate transfer be maintained on behalf of the former spouse is in effect at the time of the transferor's death.

(c) Where a nonprobate transfer fails by operation of this section, the instrument making the nonprobate transfer shall be treated as it would if the former spouse failed to survive the transferor.

(d) Nothing in this section affects the rights of a subsequent purchaser or encumbrancer for value in good faith who relies on the apparent failure of a nonprobate transfer under this section or who lacks knowledge of the failure of a nonprobate transfer under this section.

(e) As used in this section, "nonprobate transfer" means a provision, other than a provision of a life insurance policy, of either of the following types:

(1) A provision of a type described in Section 5000.

(2) A provision in an instrument that operates on death, other than a will, conferring a power of appointment or naming a trustee. (Ad Stats 2001, C417)

CODES, RULES AND REGS

Family Code

§2040

Summons; restraining orders

(a) In addition to the contents required by Section 412.20 of the Code of Civil Procedure, the summons shall contain a temporary restraining order:

(1) Restraining both parties from removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court.

(2) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party.

Notwithstanding the foregoing, nothing in the restraining order shall preclude a party from using community property, quasi-community property, or the party's own separate property to pay reasonable attorney's fees and costs in order to retain legal counsel in the proceeding. A party who uses community property or quasi-community property to pay his or her attorney's retainer for fees and costs under this provision shall account to the community for the use of the property. A party who uses other property that is subsequently determined to be the separate property of the other party to pay his or her attorney's retainer for fees and costs under this provision shall account to the other party for the use of the property.

(3) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties and their child or children for whom support may be ordered.

(4) Restraining both parties from creating a nonprobate transfer or modifying a nonprobate transfer in a manner that affects the disposition of property subject to the transfer, without the written consent of the other party or an order of the court.

(b) Nothing in this section restrains any of the following:

(1) Creation, modification, or revocation of a will.

(2) Revocation of a nonprobate transfer, including a revocable trust, pursuant to the instrument, provided that notice of the change is filed and served on the other party before the change takes effect.

(3) Elimination of a right of survivorship to property, provided that notice of the change is filed and served on the other party before the change takes effect.

(4) Creation of an unfunded revocable or irrevocable trust.

(5) Execution and filing of a disclaimer pursuant to Part 8 (commencing with Section 260) of Division 2 of the Probate Code.

(c) In all actions filed on and after January 1, 1995, the summons shall contain the following notice: