

# Dissolution of Marriage Guidelines

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## Sample Orders

Sample Order A - Dissolution Prior to Retirement

Sample Order B - Dissolution After Retirement

Sample Order C - Dissolution with Disability -Eligible for Service Retirement

Sample Order D - Dissolution with Disability - Not Eligible for Service Retirement

## **Vital Information**

Please refer to the Imperial County Employees' Retirement System's Retirement Handbook. It describes ICERS's benefit programs and includes instructions on how to estimate your ICERS retirement benefit.

Once you have reviewed the information in the Retirement Handbook, we are happy to answer any questions you may have. We suggest that you contact ICERS for assistance early in the process. Our staff can provide you and your attorneys with information regarding your retirement benefits.

ICERS is **not** subject to ERISA, or any other provisions of law applicable to Qualified Domestic Relations Orders (QDROs).

ICERS does **not** administer the Imperial County's 457 Deferred Compensation Plan. Contact the County HR Department at (442) 265-1148 for Deferred Compensation information.

ICERS is subject to the provisions of Article 8.4 of the County Employees' Retirement Law of 1937 (which begins at Section 31685 of the California Government Code). Article 8.4 provides for the division of the community property interests in ICERS retirement benefits.

## **Joinder is Mandatory**

The Imperial County Employees' Retirement System must be joined as a party to the proceedings in order for ICERS to comply with a Domestic Relations Order (DRO).

The Court is prohibited from imposing a DRO on ICERS to pay benefits with a total value that would exceed the value the Member would have received if the DRO had not been issued.

## **Authority**

These Guidelines provide for the division of the community property interest of ICERS members in accordance with the provisions of a court order setting forth the terms and conditions of the dissolution of a member's marriage issued pursuant to the Family Code and applicable case law.

## **Subpoenas**

In accordance with Government Code section 31532, ICERS will **not** honor any subpoena for information regarding a member, unless the subpoena is signed by a judge of a court of competent jurisdiction. Please note, pursuant to Government Code section 31532, ICERS cannot honor a subpoena signed by an attorney or a party in pro per.

## **Split Accounts - For Active And Deferred Vested Members**

Under Article 8.4 the member's contributions, earnings, and service credit are separated into two accounts, one for the member and the other for the nonmember. Depending on whether the member is vested or not at the time of legal separation, the nonmember may have several of the same rights that a member has, including, but not limited to, a monthly allowance.

## **Cash-out and Refund - For Spouse of Active Non-vested Member**

If the member does not have five years of accumulated service credit as to the date of dissolution or the date of legal separation, the nonmember is not entitled to a monthly benefit but will receive a refund of contributions and any interest that has been credited thereon.

## **Shared Pension Benefit - For Already Retired Members**

If a member has already retired, ICERS cannot be ordered to divide the account, but can be ordered to split each monthly retirement benefit payment under the account into two separate payments, based upon the parties' respective shares of the benefit, and provide payment to each party.

## **Guidelines are Not Mandatory**

Members and Nonmembers are not mandated to use the proposed orders in these Guidelines. These Guidelines are intended to provide the parties with reasonable flexibility, while facilitating the drafting of DROs which can be uniformly implemented by the ICERS Administrator.

## **Contact Information:**

For additional information, please contact a Retirement Representative at (760)336-3139

## **Frequently Asked Questions (FAQ)**

### **1. What is a Domestic Relations Order (DRO)?**

A DRO is a court order containing certain information and legal requirements that identify your former spouse's interest in your retirement benefit. The DRO directs ICERS to pay benefits to your former spouse.

### **2. Do I need to file any other document with the Court prior to submitting the DRO to ICERS?**

Yes. ICERS cannot accept or review a DRO until you have filed a Joinder with the Court and it has been served on ICERS. Upon doing so, the DRO should be submitted to ICERS for review prior to submitting it to the Court.

### **3. What is a Joinder?**

A Joinder is a legal document joining ICERS as a third party to your divorce proceedings. It must be served on ICERS before preparing a DRO. The Joinder notifies ICERS that your former spouse is claiming a right to a portion of your retirement benefits. Once ICERS has been joined to your divorce, generally ICERS cannot make any benefit payments or distributions to anyone until a DRO has been received.

### **4. How is a Retirement System joined to a divorce action?**

We cannot give legal advice and you should always seek legal advice from an attorney. However, the following forms are generally required; Request for Joinder (FL 372), Summons (Joinder) (FL-375), Pleading on Joinder (FL-370), Notice of Appearance and Response (FL-374).

### **5. Why do I need to have a DRO?**

Without a DRO, ICERS cannot legally make any payments to your former spouse. In addition, if ICERS has been served with a Joinder, ICERS cannot make any distributions of your retirement benefit to you or your former spouse.

### **6. Do I need to file the DRO with the Court?**

Yes, the DRO must be filed with the Court. ICERS cannot implement a DRO until it has been filed with the Court and signed by the judge.

**7. Does ICERS need to approve the DRO before I file it with the Court?**

Yes, ICERS should approve the DRO before you file it with the Court. By submitting a proposed copy of your DRO to ICERS for review, you can ensure all general legal requirements and required language and/or provisions are included to prevent unnecessary delays and multiple court orders.

If ICERS identifies any changes that need to be made to the DRO, you will be notified in writing. The same will occur if ICERS does not identify any changes. The DRO should continue to be submitted to ICERS until it has been approved. Once ICERS has approved the proposed DRO, it can be filed with the Court.

**8. Does my former spouse have to sign the DRO?**

A DRO is an agreement between you and your former spouse. Therefore, your former spouse must sign the DRO. The DRO must also be signed by the judge.

**9. Once I file the DRO with the Court, when do I need to submit the DRO to ICERS?**

Once the DRO is filed with the Court, submit it immediately to ICERS. Most importantly, the DRO must be delivered to ICERS before retiring or refunding; otherwise, ICERS will be unable to make any distribution of your retirement benefit to you or your former spouse.

**10. What requirements must a DRO contain?**

Although every DRO may be different, the basic requirements that a DRO should contain are:

- The names of the parties.
- The date of marriage and the date of separation.
- The calculation for the nonmember's share of the Member's retirement benefits.

**11. What cannot be included in a DRO?**

- The DRO must not grant the former spouse any type or form of benefit, or any option that would not otherwise be available to the member under ICERS.
- The DRO must not provide the former spouse increased benefits (as determined on actuarial value) not available to the member.
- The DRO must not order payment of any benefit to the former spouse that is already required to be paid to another former spouse under a different court order.
- The DRO must not provide payment to the former spouse of benefits forfeited by the Member.
- The DRO must not change the benefit selections of the Member once the Member has retired.

**12. Does the DRO provide for ICERS to create separate retirement accounts for the Member and former spouse?**

Yes, the DRO will create separate accounts for the Member and Nonmember.

**13. I am an active member, who is eligible to retire, and a Joinder has been filed with the Court and served on ICERS. I am already paying my former spouse his/her interest in my retirement as part of the property settlement agreement. Do I still need to file a DRO and submit it to ICERS?**

Yes. In the event that you retire, since a Joinder has been served on ICERS, you must file a DRO. ICERS will be unable to make any distribution of your retirement benefits to you or your former spouse without the DRO unless the Joinder is released by the Court.

**14. I am retired and subsequently went through a divorce. Do I need to file a DRO and submit it to ICERS?**

In this situation, the need for a DRO is dependent on the division of property as determined by the Court in your property settlement agreement (dissolution judgment). If the Court awarded your former spouse an interest in your retirement, then yes, you must file a Joinder and DRO and submit it to ICERS, even though you are retired. However, if the Court did not award an interest in your retirement to your former spouse, then you do not need to file a Joinder and a DRO.

**15. Does ICERS have sample DROs that I can use?**

Yes, ICERS offers various sample DROs to assist you in the development of an acceptable order. You can find them on our Web site at [www.icers.info](http://www.icers.info) or you can request samples by mail or phone by calling (760) 336-3139. The disposition of retirement benefits in DRO proceedings involve complex marital and tax issues. Therefore, ICERS encourages you to seek competent legal counsel to assist you with any of these issues.

**16. Which sample DRO model should I use?**

For active and deferred members use **Model A**.

For service retired members use **Model B**.

For disability retired members who are eligible to service retire use **Model C**.

For disability retired members who are not yet eligible to service retire use **Model D**.

**17. When can a Nonmember retire?**

A Nonmember may retire pursuant to Article 8.4 and elect optional allowance

**18. Does it matter if I have less than five years of service and I am not vested in ICERS?**

Yes, if as an active member you have less than five years of accumulated service credit as of the date of dissolution or the date of legal separation, you will still use Model A, but pursuant to Government Code section 31685.5(b), the nonmember spouse will receive a refund of the accumulated retirement contributions and any interest thereon which is transferred to the Nonmember's account.

**Disclaimer**

*This FAQ Sheet was drafted by the ICERS staff in order to help members understand pension issues surrounding domestic relations orders. Every effort has been made to ensure the accuracy of the information offered. However, you should not rely solely on the information contained herein. In the event of any discrepancy between the information contained in this FAQ and state and federal law, the state and federal law will govern. Further, this FAQ does not constitute legal advice.*