

Again, KCERA staff cannot advise either party concerning the applicability of any case law. Therefore, both parties should familiarize themselves with laws concerning the division of pension plans. *KCERA strongly recommends that County Counsel review a draft of the DRO before it is submitted to the court.*

Effects of Joinder

Upon receipt of a Joinder or Notice of Adverse Interest, KCERA will place a legal hold on the member's account. This hold will ensure that no funds are paid from the member's account until KCERA has received a court order or a court-approved DRO specifying the division of retirement benefits.

Note: KCERA does not receive copies of orders directly from the court. *It is the responsibility of the member, nonmember spouse or their attorneys to serve KCERA with any court-approved order.*

Dissolution after Retirement

If KCERA is served with a Summons on Joinder after the member is retired, the member's monthly retirement benefit will be reduced according to a court-approved DRO. However, KCERA is restrained by the Joinder from making benefit payments to the member until the nonmember's interest can be determined. There is often a lapse between the time a Joinder is received and the time a DRO is received. Normally, this would mean that the member's benefit would be suspended until KCERA receives an approved DRO.

However, KCERA's Counsel has opined that the nonmember spouse can never be entitled to more than 50% of the member's benefit unless the parties use the retirement asset to equalize the division of the total assets making up the community property. To avoid unnecessary hardship on our members, KCERA will only suspend 50% of the member's benefit until a DRO has been received. At that time, KCERA will determine whether the member has been underpaid and will restore the corrected benefits to the member. If the nonmember spouse is awarded more than 50% of the member's benefit in order to achieve an equal division of the marital property, KCERA requires that the DRO or other court order stipulate that the member, not KCERA, reimburse the nonmember spouse for any payments KCERA made to the member from the time KCERA received notice of the pending marital dissolution until the time the division of the retirement asset is approved.

Questions

This pamphlet provides general information to KCERA members or nonmember spouses concerning the community property division of a member's account. For specific questions concerning your account, please contact the KCERA office to speak with a retirement service representative. Confidential information will not be given over the telephone.

Note: KCERA does not administer Kern County's 457 Deferred Compensation Plan. Contact the Great-West representative at (661) 868-3467 about community property claims against deferred compensation accounts.

Your Retirement. Your KCERA.

If there is any difference between this pamphlet and the Retirement Law of 1937, the provisions of the law will apply.

Marriage Dissolution

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**Kern County Employees'
Retirement Association**

California is a community property state, and retirement accounts are generally considered to be community property. This pamphlet is intended to assist KCERA members facing a dissolution of marriage in California.

Legal Representation

While it is not mandatory that divorcing parties seek legal advice, KCERA recommends that both the member and nonmember spouse make themselves aware of laws concerning the division of retirement accounts. KCERA staff cannot provide legal advice on such matters.

Joinder is Mandatory

Family Code Section 2060(b) states that an order or judgment in a dissolution or other family law proceeding is not enforceable against the pension plan unless the plan has been joined as a party to the proceeding. For the protection of the member, the nonmember spouse and the plan, KCERA requires that the plan be joined as a party to divorce proceedings in order for KCERA to comply with a Domestic Relations Order (DRO).

Governmental QDROs

KCERA is a “governmental plan” as defined in 29 U.S.C. Sections 1002(32) and 1003(b)(1). KCERA is not subject to ERISA, or any other provisions of law applicable to a Qualified Domestic Relations Order (QDRO), except that a QDRO involving a governmental plan is sufficient under federal law if it simply “creates or recognizes the existence of an alternate payee’s right to ... receive all or a portion of the benefits payable with respect

to a participant under the plan” (26 U.S.C. Sections 414(p)(1)(A)(i) and 414(p)(11)).

Separate Accounts

Article 8.4 of the County Employees’ Retirement Law of 1937 (beginning at Section 31685 of the California Government Code) provides for the division of community property interests so that a separate account is created for the nonmember spouse in retirement plans that have adopted this Article. The creation of a separate account provides the nonmember spouse the opportunity to control when and how community property retirement benefits will be received. *Article 8.4 has not been adopted in Kern County*, and a separate account will not be created for a nonmember spouse. Therefore, no community property benefits will be paid to the nonmember spouse until the member applies for and begins receiving retirement benefits.

Confidentiality

The County Employees’ Retirement Law of 1937 makes individual retirement records confidential. These records may be disclosed only to the member or to someone authorized by the member in writing, by court order or in the administration of the law. Accordingly, KCERA personnel will not release information concerning a member’s retirement account unless the member provides a written release. Alternatively, KCERA will provide information requested through a validly issued subpoena or other authorized discovery procedures under the California Code of Civil Procedure.

QDRO Estimate

KCERA can provide upon request by the member an estimate of the community property interest of the member’s account. The member may request this estimate (called a “QDRO estimate”) by providing the following information to KCERA:

- The member’s name and Social Security number.
- The non-member spouse’s name, Social Security number & date of birth.
- The date of marriage.
- The date of separation.
- The “date of determination”: the member’s estimated date of retirement. If no date is provided, the estimate will default to the earliest possible retirement date.

The QDRO estimate will provide an estimate of benefit based on the member’s current highest average monthly compensation, total years of service during the marriage and retirement tier, if applicable. Additionally, the QDRO estimate will show the amount of contributions and interest credited to the member’s account during the marriage. Please remember that the information provided is an estimate and may not reflect the member’s actual benefit at retirement. However, the information can be useful in determining the nonmember spouse’s community property share of the member’s retirement account. Please allow four weeks for preparation of the estimate.

The attorneys representing the member or the nonmember spouse may request additional information regarding the member’s account, including, but not limited to:

- Date of hire.
- Date of entry into KCERA.
- A copy of the plan summary document.

KCERA will provide a copy of the plan summary document to any requesting party. However, any information of a confidential nature will only be released to the member or a person authorized by the member in writing.

Preparation of a DRO

A Domestic Relations Order (DRO) is frequently used to specify how the member’s account will be divided and paid. KCERA staff cannot assist the member or the nonmember spouse with preparation of any court documents. However, KCERA will provide, upon request, sample language for a DRO. This sample language is also available on the KCERA website at www.kcera.org.

Please note that neither party is required to use KCERA’s sample DRO language. However, this sample has been prepared by KCERA’s County Counsel and will meet with our Counsel’s approval.

KCERA’s sample language addresses most issues concerning the community property division of a retirement account, including use of the “time rule,” when payments may commence, preservation of the nonmember spouse’s interest in the event of death of either party before or after benefits commence, and division of any cost-of-living increases. However, there are some legal matters not addressed by this sample that may be invoked by the parties in preparation of the order.