

NOTE: THIS IS A SAMPLE AND IS NOT INTENDED TO BE A "FILL IN THE BLANK." ALL MATRIMONIAL CASES ARE UNIQUE. PLEASE BE ADVISED THE POLICE PENSION FUND DOES NOT PROVIDE LEGAL ADVICE OR SERVICES.

A Matrimonial Part ____ of the Supreme Court of the State of New York, held in and for the County of _____, at the _____ County Courthouse, (address here), on this ____ day of _____, 20__.

Present: Honorable _____

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Index No.: _____

JANE DOE

Plaintiff,

-against-

DOMESTIC RELATIONS ORDER

JOHN DOE

Defendant,

-----x

This Order is directed to the New York City Police Pension Fund, Article II.

Wherein this court retains jurisdiction over the case and the parties above-named having now stipulated to the entry of such an order upon the terms hereinafter provided, and due deliberation having been given thereto;

NOW, on a motion of _____ of the law firm of _____, attorney for the Plaintiff, it is hereby;

ORDERED, that the following facts are hereby found to be established for the purpose of this order:

1. The parties were married on _____
2. This action for divorce was commenced on _____

NOTE: The Fund will not pay a benefit to an Alternate Payee unless the parties are legally divorced.

3. The name of the Plan to which this order applies is New York City Police Pension Fund, Article II, [hereinafter referred to as “the Fund”].
4. The name of the employee spouse who is a Participant in the Fund is _____ [hereinafter referred to as the “Participant”].
5. The name of the non-employee spouse who is afforded a share of the Participants interest in the Fund by this order is _____ [hereinafter referred to as the “Alternate Payee”].
6. The current and last known mailing address of the Participant is _____ and his Social Security number is _____ and his date of birth is _____.
7. The current and last known mailing address of the Alternate Payee is _____ and her Social Security number is _____ and her date of birth is _____.
8. This Order pertains to that portion of the Participant’s retirement benefits which shall be subject to equitable distribution under Section 236(B)(5) of the Domestic Relations Law of the State of New York.
9. The benefits allocable to the Participant by reason of his participation in the Fund, to the extent they have accrued during the parties’ marriage, are marital property within the meaning of the Domestic Relations Law Section 236(B)(1)(c); and it is further

ORDERED, that the Participant’s retirement benefits with the New York City Police Pension Fund, to the extent which they have accrued during the marriage are marital property.

ORDERED, that the parties have deemed the Variable Supplements Fund to constitute marital property; and it is further

POINTER: The VSF should only be included in the DRO if the parties have agreed to equitably divide the VSF. It is not required by law to divide the VSF. If the VSF is to be included, it must be pleaded with particularity. The Fund will not pay the VSF to an Alternate Payee unless it is properly pleaded in the DRO.

The VSF is available to both Tier 2 and Tier 3 Participants who retire for Service. VSF benefits are not payable to disability retirees, Participants who resign or are terminated, or die in active service. VSF payments cease upon the death of the Participant. As of 2007, the VSF is \$12,000 annually, guaranteed by statute.

In addition to the annual VSF benefit, members who continue on active duty beyond the 20th anniversary of allowable police service, and ultimately retire for Service, are entitled to the VSF DROP (Deferred Retirement Option Plan), also known as the “Banked Variable.” If the VSF is included in the DRO, and DROP payments have not yet been paid, the Fund will automatically pay the marital portion to the Alternate Payee unless the DRO specifically excludes the DROP.

Tier 2 Only: **ORDERED**, that the term “Retirement Allowance” means the total amount payable to the Participant by the Fund pursuant to the terms of the Fund, and shall be deemed to include any annuity (based on the Participant’s contributions) as well as any Cost of Living Adjustments (COLA) which are now, or may hereafter be, available or offered to the Participant; and it is further

POINTER: COLA should only be included if the parties have agreed to its equitable division.

If a set dollar amount is listed to pay the Alternate Payee, there must be a percentage listed for the COLA. The Fund will not honor this portion of a DRO without a percentage listed. If the parties are using the coverture fraction, that percentage will be applied to COLA.

A retiree becomes eligible for COLA at age 62 if retired for at least five years, or at age 55 if retired for at least ten years, and all disability retirees are eligible for COLA after being retired for five years. The COLA amount is applied to the first \$18,000 of the retirement allowance, or to the full retirement allowance if less than \$18,000.

Pursuant to statute, when a Participant begins to receive Cost of Living Adjustment (COLA) increases, the VSF benefit is offset by the COLA amount. However, as of December 2007, COLA will no longer offset the VSF benefit for all eligible Service retirees, age 62 and over.

Tier 3 Only: **ORDERED**, that the term “Retirement Allowance” means the total amount payable to the Participant by the Fund pursuant to the terms of the Fund, and shall be deemed to include any Cost of Living Adjustments (COLA) or Escalation which are now, or may hereafter be, available or offered to the Participant; and it is further

POINTER: COLA and Escalation should only be included if the parties have agreed to its equitable division. COLA is payable to Tier 3 Participants who do not receive Escalation.

If a set dollar amount is listed to pay the Alternate Payee, there must be a percentage listed for the COLA and Escalation. The Fund will not honor this portion of a DRO without a percentage listed. If the parties are using the coverture fraction, that percentage will be applied to COLA and Escalation.

A retiree becomes eligible for COLA at age 62 if retired for at least five years, or at age 55 if retired for at least ten years, and all disability retirees are eligible for COLA after being retired for five years. The COLA amount is applied to the first \$18,000 of the retirement allowance, or to the full retirement allowance if less than \$18,000.

Pursuant to statute, when a Participant begins to receive Cost of Living Adjustment (COLA) increases, the VSF benefit is offset by the COLA amount. However, as of December 2007, COLA will no longer offset the VSF benefit for all eligible Service retirees, age 62 and over.

Escalation is applied to the full pension amount. Tier 3 Participants accrue 1/36th in escalation credit for every month in active service beyond 22 years, or for every month collection of the benefit is deferred beyond what would have been 22 years of allowable police service. Full Escalation is awarded after 25 years of allowable police service. Disability retirees and death beneficiaries receive full escalation upon deferral of one month of the benefit. Escalation does not offset the VSF.

Tier 3 Participants receive the better of Escalation or COLA annually.

Tier 2 Only: **ORDERED**, that the Participant may take pension loans or any other action which might reduce the total pension amount payable, but when calculating for the purposes of this Order, the Alternate Payee's portion of the pension, these reductions shall be excluded; and it is further

POINTER: This language is optional. If not included, the Fund will divide the actual benefit the Participant receives. The parties should contemplate whether pension loans taken during the marriage constitute marital property and, thus, any account shortage created should be shared by the parties. If that is the intent, this paragraph should be worded accordingly.

ORDERED, that should the Participant retire on a disability pension, the Alternate Payee shall receive a share of the disability pension attributable to the Participant's earnings and years of credited service only. Said share shall be calculated in the same manner as a normal service pension would be calculated without any reduction for early termination of employment. This calculation shall be performed even if the Participant had not yet attained vested status at the time of such disability retirement; and it is further

POINTER: This language is optional. If not included, the Fund will divide the actual benefit the Participant receives. If included, the Fund will calculate what the Participant would have received had he retired on a Vested or Service Retirement, and award the marital portion of that hypothetical pension to the Alternate Payee.

Parties should note that due to a recent Tax Court decision, Alternate Payees are responsible for all taxes on their portion, regardless of the tax status of the Participant's retirement allowance.

POINTER: The parties should utilize one of the 3 payment choice below to direct the Fund in how to pay the marital portion of the Retirement Allowance.

****Choice 1: The next 2 paragraphs are for parties with a Majauskas ruling****

ORDERED, that the term "Coverture Fraction" shall be defined to mean a fraction which represents that portion of the Participant's retirement benefit acquired during the parties' marriage. The numerator of said fraction is the total credited service with the Fund from the Participant's membership date, or equated membership date, or from the parties date of marriage, that being _____, whichever is later, up to the date of the division of marital assets, that being _____, or the Participant's date of retirement, termination of employment, or death, whichever is earlier, and the denominator of which is the total credited service from the Participant's membership date, or equated membership date, up to the date of retirement, termination of employment, or death; and it is further

ORDERED, that at such time the Participant has retired from and is actually receiving a Retirement Allowance from the Fund, the said Fund, in accordance with the formula devised in the case of Majauskas v. Majauskas, 61 N.Y.2d 481 (1987), is hereby directed to pay to the Alternate Payee that portion of the Participant's monthly Retirement Allowance which is equal

to fifty percent (50%) of the product obtained by multiplying the Retirement Allowance due to the Participant by the Coverture Fraction. The Alternate Payee shall be entitled to receive the same percentage of the annual Variable Supplements Fund benefit if it becomes payable to the Participant; and it is further

POINTER: The parties may agree to a set period of months for the numerator and may state that accordingly in the paragraph above, i.e., "the numerator shall be 120 months." Moreover, while Majausakas multiplies the coverture fraction by 50%, this percentage may be negotiated by the parties, i.e., 30% or 25%.

Remember, the VSF is optional, but must be pleaded as above if the Fund is to pay the Alternate Payee a VSF benefit.

****Choice 2: The next paragraph is for parties that have agreed to a set percentage****

ORDERED, that at such time the Participant has retired from and is actually receiving a Retirement Allowance from the Fund, said Fund is hereby directed to pay to the Alternate Payee that portion of the Participant's monthly Retirement Allowance which is equal to ___ percent (___%) of the monthly Retirement Allowance due to the Participant. The Alternate Payee shall be entitled to receive the same percentage of the annual Variable Supplements Fund benefit if it becomes payable to the Participant; and it is further

POINTER: Remember, the VSF is optional, but must be pleaded as above if the Fund is to pay the Alternate Payee a VSF benefit.

****Choice 3: The next paragraph is for parties that have agreed to fixed dollar amount****

ORDERED, that at such time the Participant has retired from and is actually receiving a Retirement Allowance from the Fund, said Fund is hereby directed to pay to the Alternate Payee that portion of the Participant's monthly Retirement Allowance which is equal to \$___; and it is further

POINTER: Remember, the VSF is optional, but must be pleaded as above if the Fund is to pay the Alternate Payee a VSF benefit. If a set amount is listed for the Retirement Allowance, and the Alternate Payee is entitled to the VSF, a percentage or set amount for the VSF should be included.

ORDERED, that the Fund Administrator issue separate checks to the Participant and Alternate Payee for their respective interests in the Fund and, if applicable, the Variable Supplements Fund as soon as administratively practicable, upon receipt of a certified DRO; and it is further

POINTER: A benefit cannot be paid to the Alternate Payee until the Participant has retired. The Fund will place the Alternate Payee on the next available payroll after receipt of a certified DRO. Please note that the Fund pays retirement allowances monthly on the last day of each month and the VSF on or about December 15 of each year; if the pay date falls on a weekend or legal holiday, funds are paid on the next business day. If there are arrears due to the Alternate Payee, they must be pleaded with particularity.

ORDERED, that the Participant is hereby directed to designate the Alternate Payee as the beneficiary of the Participants pre-retirement survivor benefit, so that in the event the Participant dies prior to his retirement, the Alternate Payee shall receive a portion of the pre-retirement death benefit, that being _____. Within 15 days after this Order is signed by the Court, the Participant shall complete and submit all necessary Designation of Beneficiary forms as required by the Fund to ensure that this provision is complied with. Within 15 days after said Designation of Beneficiary forms have been filed with the Fund, the Participant shall provide copies of the Designation of Beneficiary forms (time stamped by the Fund) to both the Alternate Payee and her attorney, via Certified Mail; and it is further

POINTER: This language should only be included if the parties have agreed that the Alternate Payee is entitled to a share of the pre-retirement survivor benefit. The line should be filled in with the coverture fraction or a set percentage depending upon the parties' agreement.

ORDERED, that in the event the Participant's employment is terminated prior to the time that he becomes vested in a retirement benefit, and he becomes eligible to receive a return of his accumulated annual contributions plus interest, the Alternate Payee shall receive a pro rata share of said return of accumulated annual contributions plus interest accrued on the date of termination. The Alternate Payee's share shall be _____; and it is further

POINTER: The line should be filled in with the coverture fraction or a set percentage depending upon the parties' agreement.

ORDERED, that the Participant is hereby directed to designate the Alternate Payee as beneficiary of the Participant's pension with the Fund. At the time of his retirement, the Participant is directed to choose the following option: _____. The cost of the option shall be borne _____; and it is further

POINTER: This language should only be included if the parties have agreed that the Alternate Payee is entitled to a post-retirement survivor benefit. The option used above as an example is a common requirement for Tier 2 Participants. Please note Tier 2 and Tier 3 options are different. For a complete list of options, as well as their descriptions, please consult the applicable Summary Plan Description available on the Fund's homepage at www.nyc.gov/nycppf.

A DRO that does not specify which party is to bear the cost of the option will be split proportionally (i.e., in accordance with the coverture fraction) between the parties. Acceptable verbiage is "equally" (i.e. 50/50), "proportionally," or "solely" by one party.

ORDERED, that, if eligible, the Participant shall have the right to choose the "Pop-Up" Option Modification so that in the event the Alternate Payee dies while the pension is in pay status, the retirement allowance reverts back to the Maximum Retirement Allowance. The additional cost of the pop-up modification shall be borne _____; and it is further

POINTER: This language should only be included if the parties have agreed that the Alternate Payee is entitled to a post-retirement survivor benefit. The option used above as an example is a common requirement for Tier 2 Participants. Please note Tier 2 and Tier 3 options are different. For a complete list of options, as well as their descriptions, please consult the applicable Summary Plan Description available on the Fund's homepage at www.nyc.gov/nycppf.

A DRO that does not specify which party is to bear the cost of the option will be split proportionally (i.e., in accordance with the coverture fraction) between the parties. Acceptable verbiage is "equally" (i.e. 50/50), "proportionally," or "solely" by one party.

ORDERED, that each party shall be responsible for any taxes on their respective shares; and it is further

POINTER: Police pensions are not taxable at the New York State or City level, only federally. Various states may tax the pension differently; accordingly, please consult a tax professional if you are outside New York State. The Fund will issue a 1099-R to each party at the end of the tax year.

ORDERED, that should the law or regulations of the Fund or its rules and procedures regarding the acceptance and implementation of Domestic Relations Orders be modified or otherwise revised subsequent to the acceptance of this Domestic Relations Order so that the provisions herein are binding and obligating to the Participant, may also be made a binding obligation on the Fund, then this Domestic Relations Order shall automatically become a binding obligation on the Fund; and it is further

ORDERED, that if the Participant predeceases the Alternate Payee, and at the time of the Participant's retirement, he chose a death benefit option naming the Alternate Payee as beneficiary, the benefits shall continue to the Alternate Payee under said option; and it is further

ORDERED, that in the event the Alternate Payee dies prior to commencement of benefits to her, the Participant shall have the option to receive full benefits and choose any pension option available and this Domestic Relations Order shall be void; and it is further

ORDERED, that nothing contained in this Order shall be construed to require the Fund or Fund administrator to:

- (a) provide any form, type or amount of benefit, or any option, not otherwise provided for under the Fund;
- (b) provide increased benefits determined on the basis of actuarial value; and require the payment of benefits to the Alternate Payee which are required to be paid to another Alternate Payee under another Order previously determined to be a Domestic Relations Order; and it is further

ORDERED, that the Fund shall have no obligation or responsibility as a consequence of this action apart from the specific directions contained in this Order; and it is further

ORDERED, that this Order is to be deemed appropriate to effectuate the division of the retirement benefits earned by the Participant, pursuant to his participation in the New York City Police Pension Fund, Article II; and it is further

ORDERED, that a Court certified copy of this Order shall be served upon the New York City Police Pension Fund, Article II, 233 Broadway, New York, New York 10279, by _____; and it is further

ORDERED, that in the event of a change of name or address of the Alternate Payee, she will promptly notify, in writing, the New York City Police Pension Fund, Article II, 233 Broadway, New York, New York 10279; and it is further

ORDERED, that the service of a _____ County Clerk's certified copy of the order, by certified mail, return receipt requested, upon the New York City Police Pension Fund, Article II, 233 Broadway, New York, New York 10279, shall be deemed to be good and sufficient service hereof as if it were personally serviced in the State of New York; and it is further

ORDERED, that this Court retains jurisdiction to implement and supervise the payment of retirement benefits as provided herein should either party or the Fund Administrator make such application, and the Court determines such to be appropriate and necessary.

ENTER:

Hon. _____
Justice, Supreme Court

PLEASE SUBMIT A PROPOSED DRO TO THE POLICE PENSION FUND (ATTN: LEGAL, 233 BROADWAY, 25TH FLOOR, NY, NY 10279) FOR APPROVAL PRIOR TO SUBMISSION TO THE COURT. THE FUND DOES NOT REVIEW THE ORDER FOR FAIRNESS OR TO ENSURE THAT THE ORDER COMPORTS WITH THE PARTIES' SETTLEMENT AGREEMENT; RATHER, TO ENSURE THE DRO COMPLIES WITH FUND RULES AND STATE LAW.