

ST. CLAIR COUNTY EMPLOYEES' RETIREMENT SYSTEM

POLICY RESOLUTION 19-03

Revising Policy Resolution 12-06

Adopted: January 20, 1998

Revised: October 21, 2008

Revised: December 19, 2017

Revised: August 20, 2019

Re: Statement of Administrative Policies and Procedures - Domestic Relations Matters

WHEREAS, the Board of Trustees of the St. Clair County Employees' Retirement System is vested with the authority and fiduciary responsibility for the administration, management and operation of the Retirement System, and

WHEREAS, Public Act 46 of 1991, MCLA 38.1701 *et seq.* mandates that all public employee retirement systems must comply with Eligible Domestic Relations Orders issued pursuant to the domestic relations law of the State of Michigan, and

WHEREAS, Public Act 46 of 1991 requires the Board to establish reasonable procedures to determine whether a domestic relations order received by the Board is an EDRO under the EDRO Act, and

WHEREAS, the Board of Trustees is desirous of restating its various policies and procedures with regards to the Retirement System's administration of all court orders, subpoenas and requests for information with regards to domestic relations proceedings, and

WHEREAS, the Board of Trustees had discussed this matter with its legal counsel, who, in conjunction with the Board's Actuary, has developed and recommended procedures and forms for use in this regard, therefore be it

RESOLVED, that the Board of Trustees hereby adopts the attached "Statement of Administrative Policies and Procedures Regarding Domestic Relations Matters", and further

RESOLVED, that a copy of this resolution and the attached policy shall be provided to the Board of Trustees' Actuary and Legal Counsel, and further

RESOLVED, that a copy of the Board of Trustees' policy shall be provided to the parties and attorneys involved in domestic relations proceedings involving Retirement System benefits.

ST. CLAIR COUNTY EMPLOYEES' RETIREMENT SYSTEM

Statement of Administrative Policies and Procedures Regarding Domestic Relations Matters

I. DOMESTIC RELATIONS LEGISLATION

Historically (i.e., prior to 1985), Michigan law did not require courts to consider pensions as part of the marital estate. In 1985, the Michigan Legislature acted to clarify the treatment given to pension rights in divorce cases. There were certain significant aspects in the legislation which directly impacted the administration of retirement systems, including the requirements that:

1. Any rights in and to vested pensions or annuities that were accrued during a marriage shall be considered part of the marital estate and subject to award by the court.
2. Any rights or contingent rights in and to an unvested pension accrued during the marriage may be considered part of the marital estate and subject to award by the court where just and equitable.
3. Each support order entered or modified by the circuit court shall provide for an order of income withholding.
4. An order of income withholding shall be binding upon any source of income (which includes the pension trust fund) 7 days after service by mail of a true copy of the order.

To ensure that retirement benefits are considered in each divorce and separate maintenance action, parties to such actions are required to include a provision determining all rights that a spouse has in any pension. The courts therefore, have jurisdiction over public employee retirement systems for distribution in divorce cases. Orders made in such actions are effective only against the proceeds of the plans when they are actually paid and they confer no greater or different right in the plan. Such simple domestic relations orders (DROs), in accordance with the Support and Visitation Enforcement Act and the Public Employee Benefit Protection Act, include a judgment or order of the court relating to alimony payments, child support, or marital property rights to a spouse of a participant under a judgment of separate maintenance, or to a former spouse, child or dependent of a participant. Such orders do not require payment of any payment option not otherwise provided by the plan or permit distribution of benefits in any manner or pursuant to any procedure which is inconsistent with the provisions of the plan. In summary, DROs only permit the Retirement System to divide the participant's retirement benefit between the parties, but do not afford the former spouse other benefits (e.g. ability to elect benefits early or be designated for surviving spouse benefits, etc.). DROs continue to be the only means by which parties may divide the pension benefits of those individuals that have retired prior to the date of divorce.

In 1991, the Michigan legislature enacted the Eligible Domestic Relations Orders Act, Public Act 46 of 1991 (MCL 38.1701 et seq.) (“Act 46”), to authorize the payment of public employee retirement system assets to certain individuals. The Eligible Domestic Relations Order Act mandates that all public employee retirement systems comply with Eligible Domestic Relations Orders (EDROs) issued by state courts and establishes specific requirements for those systems created and covered by state laws. The EDRO Act was amended in 2013 to allow for an Order to be entered either before the participant’s retirement or death, whichever occurs first. The 2013 amendments also provide for a 60-day period during which a DRO which did not qualify as an EDRO could be corrected.

SUMMARY ANALYSIS OF THE ELIGIBLE DOMESTIC RELATIONS ORDER ACT

Eligible Domestic Relations Order (EDRO) - A domestic relations order that is considered an Eligible Domestic Relations Order under the provisions of Act 46 must meet the following requirements:

1. The order must state the names and last known addresses of the participant and the alternate payee. It is recommended that this information be provided in an attachment to the EDRO to protect the personal information of the participant from becoming a part of the public record.
2. The order must include an attachment that provides the social security numbers of the participant and the alternate payee. It is recommended that this information be provided in an attachment to the EDRO to protect the personal information of the participant from becoming a part of the public record.
3. The order must state the amount or percentage of the benefit to be paid to an alternate payee or the manner under which the retirement system is to determine the amount or percentage of the benefit to be paid to an alternate payee.
4. The domestic relations order must state that it applies to the retirement system and that the retirement system shall make payments to the alternate payee as required under the Eligible Domestic Relations Order and Act 46.
5. The domestic relations order does not require the retirement system to provide a type or form of benefit not provided by the retirement system or a form of payment not provided by Act 46.
6. The domestic relations order does not require the retirement system to provide an increased benefit determined on the basis of actuarial value.
7. The order does not require the payment of a benefit to an alternate payee that is required to be paid to another alternate payee under previously filed eligible domestic relations order.

8. The domestic relations order is filed before the participant's retirement allowance effective date. However, amendments to the EDRO Act require a participant's retirement allowance effective date to be stayed for 60 days upon rejection of a purported and presented EDRO that did not meet the qualifications for acceptance by the Retirement System. During the 60-day period the parties could submit an amended EDRO for consideration.

BENEFIT PAYMENTS

Except as otherwise provided in Act 46, the payment of a benefit to an alternate payee under an EDRO shall begin on the participant's retirement allowance effective date. The payment of a benefit under an EDRO and Act 46 shall be paid in one of the following forms as applicable:

1. A single life annuity that is equal to the actuarial equivalent of the alternate payee's share of the benefit payable throughout the life of the alternate payee.
2. If an option benefit is elected, then a reduced benefit that is equal to the actuarial equivalent of the total benefit being divided under the EDRO payable throughout the lives of the participant and the alternate payee. (Note: This form of benefit is only available if the participant and alternate payee commence receipt of benefits at the same time.)
3. A single life annuity that is equal to the alternate payee's share of the benefit payable throughout the life of the participant.

The EDRO may provide that:

1. The alternate payee's benefit shall begin at the time that the participant retires or the alternate payee may elect payments to commence on any date on or after the participant's earliest retirement date prior to the participant's termination of employment in an actuarially equivalent amount.
2. The alternate payee may be determined to be the spouse of the participant thereby rendering him/her eligible for surviving spouse benefits (or a portion of such benefits).
3. If an alternate payee to an actual interest in a share of a benefit that is or will become payable to a participant dies before receiving any payment, that interest reverts to the participant.
4. Post-retirement benefits of the participant in which an alternate payee may share as provided in the EDRO, include but are not limited to:
 - a. A supplemental annuity;
 - b. A supplemental payment to a participant;
 - c. A percentage increase to a benefit payable to a participant; and
 - d. Any other payment to a participant or increase to a benefit payable to a participant, excluding health benefits.

ALTERNATE PAYEE ELECTION

An EDRO may provide for payment of a benefit to an alternate payee beginning on or after the participant's earliest retirement date (i.e., on or after the date the participant is eligible to retire), but before the participant terminates employment. If an alternate payee so elects to receive his or her interest, the alternate payee is only entitled to the actuarial equivalent of the alternate payee's share of the participant's benefit that would be payable when the participant reaches age 60. If the participant retires before age 60, the retirement system shall recalculate the benefit payable to the alternate payee so that the recalculated benefit plus the benefit previously paid to the alternate payee are the actuarial equivalent of the alternate payee's share of the benefit payable to the participant. Please note that absent any specific EDRO provision to the contrary, if a participant elects to continue employment beyond the age of 60, then any recoupment required would actuarially reduce the participant's share of his/her own benefit based on each month worked until the participant's actual date of commencement of benefits. Please note further that the Board's actuary will use the Participant's actual age by years and months for purposes of determining the recoupment amount based upon the System's mortality table.

SURVIVOR BENEFIT

An EDRO may also provide that the former spouse is considered to be the spouse of the participant for the purpose of receiving survivor benefits. If the percentage of the benefit or amount to be paid to a spouse is less than the entire amount payable by the retirement system, the surviving spouse or other beneficiary of the participant is entitled to receive the portion of the benefit not payable to a former spouse.

If an alternate payee under an EDRO dies before receiving any payment of his or her interest in a benefit pursuant to the EDRO, that interest reverts to the participant.

The above analysis is merely a summary. The law as written and passed will, in the future, be further defined by case law or amendments. Further, the statute must be read in conjunction with other statutes. Whether a domestic relations order is in fact an EDRO, is a legal question. It is important, therefore, that all Domestic Relations Orders submitted to the Retirement System be reviewed by legal counsel.

II. PLAN OVERVIEW

The following is an overview of the Retirement System and some of the Plan provisions. The parties to a domestic relations proceeding and/or their legal counsel should review the plan document(s) to familiarize themselves with the Retirement System and the benefits provided.

The Retirement System is a qualified governmental plan under applicable provisions of the Internal Revenue Code and consists of a defined benefit plan. The benefit provisions of the Retirement System are contained within the St. Clair County Employees Retirement System Ordinance, as amended by the individual member's applicable collective bargaining agreement. In the event of a conflict between the plan provisions and the collective bargaining agreement, the collective bargaining provisions prevail.

III. SAMPLE EDRO

The Board of Trustees has approved the availability of a sample EDRO and a sample DRO for use by its members and beneficiaries. The samples are forms only. The parties and/or their attorneys must conduct their own research and investigation of the plan provisions and applicable law, including the EDRO Act to determine which type of order and/or provisions are appropriate under the circumstances. Copies of the sample orders are available from the Retirement Board office. [Form DRO-1].

IV. REQUESTS FOR INFORMATION

The Board of Trustees respects an individual member's right to privacy and strictly construes the Freedom of Information Act as to the release of a member's personal retirement data to third parties. This respect for a member's right to privacy is not altered by the commencement or pendency of domestic relations proceedings. Requests by third parties for personal retirement data must be accompanied by a signed waiver or a court-entered order or subpoena.

V. PROPOSED ORDERS

The parties to a domestic relations proceeding are encouraged to forward their proposed EDRO, DRO, or other applicable order to the Board of Trustees for review prior to entry of the order with the court. The Board, through its legal counsel, will review the proposed order for compliance with plan provisions and applicable law. Comments and/or required amendments or additions will be forwarded to the parties.

VI. COSTS

- A. Policy Statement: The Retirement System is frequently presented with requests, court judgments and/or court orders which require the providing of legal review and/or comment, estimates and/or calculations with respect to proposed or actual court judgments or domestic relations orders, including proposed or actual Eligible Domestic Relations Orders pursuant to Public Act 46 of 1991 of the State of Michigan statutes (MCL 38.1701, et seq.). The EDRO Act requires the Board to establish a reasonable procedure to determine if a domestic relations order is an Eligible Domestic Relations Order under the EDRO Act. The Board has adopted this procedure to implement the requirements of applicable law, which procedure necessarily includes the involvement of professional advisors due to the legal and actuarial issues inherently involved. Said estimates and calculations are made by the Board's actuary who submits billings for said services. Legal review and comment, which may include proposed amendments and/or consultation with the parties' attorneys, is performed by the Board's legal counsel who also submits billings for

said services. Despite the increased costs to the Retirement System and the taxpayers of the St. Clair County imposed by the enactment of domestic relations legislation, the Legislature has not provided funding to administer the legal mandates of the applicable legislation. The Board is vested with the fiduciary responsibility and authority for the general administration and management of the Retirement System. The Board is of the opinion that the costs for providing such estimates and calculations is not the responsibility of the Retirement System, but is the responsibility of the party or parties to the domestic relations proceeding. The Board agrees to provide an estimate as requested by either party to the Board's Administrator. The Board's Administrator will provide such an estimate in a reasonable time. A party requesting further actuarial calculations prior to entry of an order shall otherwise be responsible for all the corresponding costs. In the event said costs are not paid by either or both parties to the domestic relations proceedings, the applicable cost, plus interest at the Plan's actuarially assumed rate, shall be deducted from the respective party's benefits at such time as benefits become payable by the Plan.

- B. The parties are encouraged to address each party's responsibility for payment of actuarial costs within the terms of their respective EDRO, court order and/or correspondence which requests and/or requires actuarial calculations. The party/parties shall complete and execute a Fee Payment Agreement [Form DRO-6] and forward said agreement to the Board. In the absence of a signed payment agreement or specific terms in the EDRO, the Board of Trustees shall split (50/50) the actuarial costs and applicable legal costs between the party or parties to the order.
- C. Upon receipt of an entered domestic relations order, the Board of Trustees shall follow the procedures outlined in Section VII. The actuarial and legal costs directly attributable for review and calculation with certification (i.e., that the EDRO does not increase plan costs) are the responsibility of the parties. If the parties request or circumstances dictate an immediate actuarial calculation of benefits, including estimates (i.e. participant or alternate payee commencing benefits immediately), said costs are also the responsibility of the parties.
- D. Any domestic relations order or request for calculations submitted to the Retirement System shall be subject to reimbursement of the Retirement System's actuarial and legal fees and costs associated therewith. The parties or party shall forthwith tender such amounts as may be required upon billing by the Retirement Administrator. In the event said costs are not paid by either or both parties to the domestic relations proceedings within six (6) months of the entered EDRO or the commencement of receipt of benefits then the applicable costs, plus interest at the Plan's actuarially assumed rate, shall be deducted from the respective party's benefits at such time as benefits become payable by the Plan.

- E. Upon the participant's retirement, the Board of Trustees will pay the normal actuarial costs for determining the amounts otherwise payable to the participant (i.e., the amount for calculation of the participant's straight life benefit and applicable options). Any additional actuarial costs for calculations required pursuant to the terms of the EDRO will be the responsibility of the parties.

VII. ENTERED ORDERS

- A. Upon receipt of a judgment or order purporting to be an Eligible Domestic Relations Order, the Board of Trustees is required to acknowledge receipt of said judgment or order.
- B. The Board's Administrator will notify the parties who will be affected by such order (the plan participant, the alternate payee and legal counsel for said parties) and inform them that the Board of Trustees will proceed with a determination as to whether the order is an effective Eligible Domestic Relations Order within 30 days after receipt of the order. An "Acknowledgment of Receipt of Judgment or Order Purporting to be an Eligible Domestic Relations Order" form letter will be completed by the Board's Administrator and forwarded to the parties. [Form DRO-2]
- C. The Board's Administrator shall forward a copy of the order and other appropriate information to the Board's [Legal Counsel] for review as to whether the order complies with the Plan's provisions and applicable law. [Form DRO-3] The costs to the Retirement System for legal review and certification shall be the responsibility of the parties.
- D. Upon review, the Board's legal counsel will prepare and forward correspondence and/or proposed resolutions as may be applicable for forwarding to the Board and/or parties. Legal counsel will forward its opinion to the Board as to compliance of the order with applicable law and Plan provisions. [Form DRO-4] If the order does not meet the requirements of the Act or the Plan, the Board's legal counsel will promptly notify the parties of the order's deficiencies.
- E. After legal counsel opines that the order complies with applicable law and Plan provisions, a copy of the order will be forwarded to the Board's actuary for review and calculation. Said calculation will be forwarded by the actuary to the Board. Please note: the parties will be responsible for all actuarial and legal costs, and must comply with the provisions of this policy regarding costs.
- F. Upon receipt of the opinion of its legal counsel, if the parties do not utilize the sample orders and the Board's legal counsel or the Board's Administrator determine that an actuarial certification is necessary, a copy of the entered order will be provided to the actuary for certification that the Order does not require the Retirement System to provide an increased benefit determined on the basis of actuarial value. The Board of Trustees will adopt a resolution acknowledging receipt of an entered order which complies with plan provisions and applicable law. A copy of this resolution and the actuary's certification (if requested) will be forwarded to the parties and their

attorneys. A copy of the approved order will be placed in the participant's Retirement System file.

- G. The Board's Administrator will thereafter request computation of any required payroll data and service credit and complete the EDRO Information form for inclusion in the participant's Retirement System file [Form DRO-5].

VIII. REQUEST FOR BENEFIT ESTIMATES AND/OR CALCULATIONS

- A. In cases where a member or retiree of the Retirement System or the spouse or alternate payee of a member or retiree seeks estimates and/or calculations concerning the retirement allowance of the member or retiree, such estimates, to the extent possible, may be obtained from the Board's Administrator. If the Board's Administrator does not have access to the requested information or the ability to calculate the requested computation, the Board has no objection to the actuary providing the information provided:
 - 1. The Board of Trustees and the Board's legal counsel (VanOverbeke, Michaud & Timmony, P.C.) shall be a copy recipient of all correspondence between the member, retiree or spouse of a member or retiree or their legal counsel.
 - 2. The Retirement System shall be reimbursed for all costs associated with the request by the party or parties requesting the actuarial calculation in compliance with Section IV. In the absence of a signed payment agreement or specific terms in the EDRO, the Board of Trustees shall split (50/50) the actuarial costs between the parties to the order.

IX. ALTERNATE PAYEE'S COMMENCEMENT OF BENEFITS

- A. Upon receipt and approval of an EDRO or other appropriate order, the Board resolves to put a copy in the participant's file. The Board of Trustees does not notify alternate payees of their eligibility to commence receipt of benefits until such time as the participant files application for retirement. If it is the intent of the alternate payee to commence receipt of benefits at the participant's earliest retirement date, the alternate payee must keep track of that date and make application to the retirement system as appropriate.
- B. An alternate payee must make application not less than 30 and not more than 90 days prior to their intended benefit commencement date.