

This document is prepared by:

Attorney for Plaintiff Defendant

Name: _____

Address: _____

Telephone Number: (_____) _____ - _____

FAMILY COURT

_____ CIRCUIT

STATE OF HAWAII

_____ (Name),)	FC-D No. _____
Plaintiff)	
)	HAWAII DOMESTIC RELATIONS
v.)	ORDER FOR THE EMPLOYEES'
)	RETIREMENT SYSTEM OF THE STATE
_____ (Name),)	OF HAWAII (POST-RETIREMENT)
Defendant)	
)	Judge: _____
)	Hearing date: _____
_____)	

HAWAII DOMESTIC RELATIONS ORDER FOR THE EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF HAWAII (POST-RETIREMENT)

A hearing was held before the Presiding Judge or an affidavit was submitted and the Court waived hearing on the matter. After full consideration of the evidence,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1. This Hawaii Domestic Relations Order for the Employees' Retirement System of the State of Hawaii ("Order") is intended to meet the requirements for a "Hawaii domestic relations order" relating to the Employees' Retirement System of the State of Hawaii ("ERS" or "System"), as set forth in Section 88-93.5 of the Hawaii Revised Statutes ("HRS"), as revised, and Sections 6-40-1, et seq., of the Hawaii Administrative Rules ("HAR"). This Order is an integral part of the Decree of Divorce signed on _____ (date).
2. This Order creates or recognizes the right of an alternate payee, or assigns to the alternate payee, the right to receive a portion of the benefits payable with respect to a member or retirant under the System ("Retirant").

3. The RETIRANT of the System is:
 Plaintiff Defendant (check one)
 Name: _____
 Mailing Address: _____
 Telephone: (_____) _____ - _____
 Social Security Number: xxx - xx - _____
 Former Employer: _____
 Former Employer's Address: _____

4. The ALTERNATE PAYEE (spouse or former spouse) is:
 Plaintiff Defendant (check one)
 Name: _____
 Mailing Address: _____
 Telephone: (_____) _____ - _____
 Social Security Number: xxx - xx - _____

5. Retirant and Alternate Payee were married on _____ (date).

6. **RETIREMENT BENEFITS.** As part of the division of the property of the parties, the Alternate Payee is awarded a portion of each distribution of retirement benefits made by the System pursuant to HRS §§ 88-73, 88-75, 88-79, 88-281, 88-284, 88-285, 88-331, 88-334 and/or 88-336, if and at the time the retirement benefits become payable to the Retirant, as provided by and subject to the System's governing laws and rules, and Paragraphs 7, 8 and 9 below. The Alternate Payee's portion of the Retirant's monthly retirement allowance under the retirement allowance payment option elected by the Retirant and remaining after payments required pursuant to earlier Hawaii domestic relations orders, shall be (check one):

A. A percentage determined by the following formula:

		Months of service credits the system determines has been credited to the Retirant from _____ (date of marriage) through _____ (date of divorce)
_____ % (fractional marital property interest)	X	Total months of service credit the system determines has been credited to the Retirant upon retirement

- B.** _____ (numerical percentage) %.
- C.** \$_____._____ (numerical dollar amount), or the total distribution payable to the Retirant, whichever is less.
- D.** None.

Payments to the Alternate Payee, subject to Paragraphs 7, 8 and 9 below, shall commence as of the first day of the month following the date upon which the Order is determined to be a Hawaii domestic relations order. Payments to the Alternate Payee, subject to Paragraphs 7, 8 and 9 below, shall terminate upon the death of the Retirant, or upon the death of the Alternate Payee, whichever is earlier.

7. When the system receives a certified copy of this Order subsequent to the Retirant's retirement, and if this Order is determined to be a Hawaii domestic relations order, the portion awarded to the Alternate Payee by the Order shall be paid as a portion of the retirement benefit the Retirant is receiving pursuant to HRS §§ 88-73, 88-75, 88-79, 88-281, 88-284, 88-285, 88-331, 88-334 and/or 88-336 as follows:

- A. If the Alternate Payee is already a named beneficiary under any option elected by the Retirant at retirement, the benefit to which the Retirant is entitled, without regard to the Order, shall be apportioned between the Retirant and the Alternate Payee according to the terms of the Order. Upon the death of the Retirant or the Alternate Payee, the benefit amount to be paid to the survivor shall be the amount required under the option elected by the Retirant at retirement, as though this Order had not existed; or
- B. If the Alternate Payee is not a named beneficiary under the option elected by the Retirant at retirement, the benefit to which the Retirant is entitled without regard to the Order, shall be apportioned between the Retirant and the Alternate Payee according to the terms of the Order. If the Retirant predeceases the Alternate Payee, payments to the Alternate Payee shall cease and payments to the Retirant's named beneficiary or beneficiaries shall be made as required under the option elected by the Retirant at retirement, as though this Order had not existed. If the Alternate Payee predeceases the Retirant, the benefit then being paid to the Retirant shall be increased by the amount of the benefit that was being paid to the Alternate Payee at time of death.

8. When the System has not yet begun to make payment to the Alternate Payee under this Order and is provided with proof of the death of the Alternate Payee, benefits payable with respect to the Member shall be paid without regard to this Order.

9. If the Retirant returns to employment requiring active membership in the system:

- A. Payments to the Alternate Payee pursuant to the Order shall not be suspended; and

- B. The System shall pay to the Alternate Payee no portion of any benefits payable to the Retirant that result from the resumption of membership, even if those benefits result in part from reinstatement of service credit initially credited during marriage.

10. Any amount payable by the ERS, other than those payable to the Alternate Payee under Paragraph 6 above, shall be payable directly to the Retirant, the Retirant's beneficiaries, or the estate, heirs, or legatees of either, in accordance with the System's laws and rules. If the Retirant, or the beneficiary or estate of either, receives the amount of any distribution that has been awarded to the Alternate Payee, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the person to whom the amount should have been paid. If the Alternate Payee, or the estate, heirs, or legatees of the Alternate Payee receive any amount of a distribution that has not been awarded to the Alternate Payee, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the Retirant or other person to whom the amount should have been paid. If the Retirant, Retirant's beneficiary, Alternate Payee, or their estate, heirs, or legatees, receives any amount that should not have been paid by the System, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the System.

11. The Alternate Payee is ordered to report any payments received from the System on any applicable income tax return in accordance with the Internal Revenue Code provisions or regulations in effect at the time any payments are issued by the ERS. The System is authorized to issue a Form 1099R, or other applicable form on any direct payment made to the Alternate Payee.

12. The Alternate Payee is ordered to provide the System with prompt notification of any changes in the Alternate Payee's direct deposit and mailing address. The System shall not be liable for failing to make payments to the Alternate Payee if the System does not have current direct deposit information for the Alternate Payee at the time of payment. Nor is the System liable for the non-receipt of a Form 1099R if the ERS does not have current mailing address information at the time of issue.

13. The Retirant or the Alternate Payee shall furnish an original certified copy of this Order to the ERS. The Order is not a qualified Hawaii Domestic Relations Order until an original copy is received by the ERS and is thereafter so deemed pursuant to HRS § 88-93.5, as revised, and HAR § 6-40-1, et seq.

14. This Order shall not be interpreted in any way to:

- A. Require the designation by the Retirant of a particular person as the recipient of benefits upon the death of the Retirant;
- B. Require the selection of a particular benefit payment plan or option or to limit the benefit payment plans or options from which the Retirant may select;

- C. Require any action on the part of the System contrary to its governing laws or plan provisions other than the direct payment of the benefit awarded to the Alternate Payee;
- D. Award the Alternate Payee an interest that is contingent on any condition other than those conditions resulting in the liability of the System for payment under its plan provisions;
- E. Give to someone other than the Retirant the right to designate a beneficiary or to choose any retirement plan or option available from the system;
- F. Attach a lien to any part of amounts payable with respect to the Retirant;
- G. Require the System to make a lump sum payment of the awarded portion of the benefits to the Alternate Payee that are not otherwise payable in a lump sum;
- H. Require the System to terminate the Retirant from membership or employment, to refund contributions, or to retire the Retirant;
- I. Provide any type or form of benefit, or any option, not otherwise provided by the System;
- J. Provide increased benefits, determined on the basis of actuarial value; or
- K. Require the system to provide benefits or refunds to the Alternate Payee that are required to be paid to another alternate payee pursuant to an earlier Hawaii domestic relations order.

15. This Court does not have jurisdiction over the System with respect to this divorce action, and the System shall not and has not been made a party to this divorce action and any other judicial proceeding herein. A determination by the System that this Order is not a Hawaii domestic relations order shall be subject to review as provided in HRS chapter 91, and the System's rules relating to contested cases. Any party to this divorce action who attempts to make the System a party to this divorce action shall be liable to the System for the System's costs and attorneys' fees, including attorneys' fees and costs for obtaining a dismissal.

16. The Court retains jurisdiction to amend this Order so that it will constitute a qualified Hawaii Domestic Relations Order under the System's governing laws and rules even though all other matters incident to this action or proceeding have been fully and finally adjudicated. If the System determines at any time that changes in the law, the administration of the System, or any other circumstances make it impossible to calculate the portion of a distribution awarded to the Alternate Payee by this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.

INSTRUCTIONS FOR HAWAII DOMESTIC RELATIONS ORDER
FOR THE EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF HAWAII
(POST-RETIREMENT FORM ERS-301 ONLY)

These instructions are for the completion of a Hawaii Domestic Relations Order (HiDRO) for the Employees' Retirement System (ERS) of the State of Hawaii and are specific to a post-retirement order to be filed and qualified after the retirement of a member or former member with vested status. If the member is not retired, a pre-retirement form should be used. A Divorce Decree or Complaint for Divorce **cannot** be used in place of this form.

A post-retirement Hawaii Domestic Relations Order allows the ERS to pay directly all or a portion of a retiree's monthly pension benefit to an alternate payee, such as a spouse or former spouse. This form must be filed in the State of Hawaii Family Court, then qualified by the ERS to be valid. A fee of \$300 (check made to the Employees' Retirement System of the State of Hawaii) also must accompany any form before it is reviewed for qualification by ERS. If the Order is to be filed outside of Hawaii, please contact the ERS (808) 586-1735 for instructions.

General information about the ERS plan and options for members, former members, and retirees is available at the ERS website (ers.ehawaii.gov). If more information about a specific member's account is needed prior to filing a HiDRO form, contact the ERS for a request for information form and release requirements. While the ERS can provide information about the benefits plan and procedures, it cannot provide you with legal advice. Information provided should not be relied on as a determination of any legal issues under state law. You should consult an attorney to protect your interest in ERS benefits and determine your statutory rights under state law.

Read and fill out the form completely to avoid any unnecessary fees.

INSTRUCTIONS (by the paragraph number on the form)

Caption (the blanks above the title, "HAWAII DOMESTIC RELATIONS ORDER FOR THE EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF HAWAII (POST-RETIREMENT)"). Enter the name, address and telephone number of the party preparing the document; enter the name of the court, names of parties, case number, name of judge, and hearing date.

Paragraph numbers:

1. Enter the date the Divorce Decree was signed.
3. Fill in the name and information of the retirant (retiree), and checkmark whether the member is the plaintiff or defendant in the Divorce Decree.
4. Fill in the name and information of the Alternate Payee, and checkmark whether the alternate payee is the plaintiff or defendant in the Divorce Decree.
5. Enter the date of marriage (month, day, year).
6. Applies to the member's **monthly retirement payment. Choose one (1, 2, 3 or 4):**
 - **Checkmark A** if the portion paid to the alternate payee is to be determined by the formula using the member's service credits based on the dates of marriage and divorce. Enter the numerical percentage to be used in the line above the (fractional marital property of interest). In the top right of the formula, enter the date of marriage and the date of divorce. The bottom right of the formula will be member's total service credits at the time of the member's retirement. The alternate payee's portion will be calculated using this formula at the time of retirement.

- **Checkmark B** if the portion to the alternate payee is a numerical percentage of the entire monthly pension payment.
- **Checkmark C** if the portion to the alternate payee is a numerical dollar amount or the total distribution payable to the member, whichever is less.
- **Checkmark D** if none of the retiree's pension monthly pension payment will be distributed to the alternate payee.

Signatures. The Judge's signature must be obtained after completing the form. The signatures of the parties and attorneys (if applicable) should be completed prior to submission to the Judge for signature.

Case and document name (footer). Enter the name of the parties, court, and case number.

After filing the HiDRO form in court, bring in or mail the original court order and the \$300 fee with the attached Request for Review Form (ERS-302) to the Employees' Retirement System, 201 Merchant Street, Suite 1400, Honolulu, HI 96813 or call us (808-586-1735) for Neighbor Island locations. Upon receipt, the ERS will begin review of the court-filed form for qualification.

(ERS 2020-06-29)

Employees' Retirement System of the State of Hawaii
201 Merchant St, Suite 1400
Honolulu, Hawaii 96813-2980
(808) 586-1735 <http://ers.ehawaii.gov/>

**REQUEST FOR REVIEW OF HAWAII DOMESTIC RELATIONS ORDER
OR PROPOSED HAWAII DOMESTIC RELATIONS ORDER**

INSTRUCTIONS: This is a form to request review of a Hawaii Domestic Relations Orders (HiDRO) Model Form for Pre-Retirement (ERS-300) or Post-Retirement (ERS-301) to the Employees' Retirement System. **A non-refundable fee of \$300 is required for each review.**

*Submit to the address stated above:

- A court-entered HiDRO Model Form or proposed HiDRO Model Form (absent court-entry);
- This form (completed and signed); and
- Payment of the fee for review (\$300) by check, made payable to Employees' Retirement System.

SECTION A: REQUESTOR'S INFORMATION

Name: _____

Address: _____

Phone Number _____

Court Case Number _____ **Date of Court Filing _____

ERS Member/Retirant Name: _____ Full SSN: _____ - _____ - _____

Alternate Payee Name: _____ Full SSN: _____ - _____ - _____

Alternate Payee's Date of Birth: _____ / _____ / _____
MM DD YYYY

**-- Leave blank if request is for a Proposed HiDRO

Requests submitted by a third party other than an ERS member, ERS retirant or alternate payee, will not be processed unless the ERS is provided with a letter containing the original signature of the ERS member, ERS retirant or alternate payee, verifying that the third party is authorized to act on behalf of the ERS member, ERS retirant or alternate payee.

SECTION B: PAYMENT INFORMATION

Payment for (check one): Court-entered HiDRO Proposed HiDRO

A court-entered HiDRO Model Form may be submitted for review and determination of whether it is or is not qualified as a HiDRO. **Only court-entered HiDRO Model Forms are eligible for determination by the Employees' Retirement System that it is or is not qualified as a HiDRO.**

A proposed HiDRO Model Form (absent court-entry) may be submitted for review and notice of whether it meets the requirements for a HiDRO.

SECTION C: PAYMENT SUBMISSION

Enclosed is my payment check, payable to Employees' Retirement System in the amount of \$300. I understand this fee is non-refundable. Your cancelled check will be your receipt of payment.

Requestor's Signature _____ Date _____