PERA
Public Employees
Retirement Association
of New Mexico

INVESTED IN TOMORROW.

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ATTORNEY INSTRUCTIONS:
ORDER CHANGING RETIREMENT BENEFITS
FORM OF PAYMENT ELECTION
INCIDENT TO DIVORCE

INTRODUCTION: Attached is a Model Order Changing PERA Retirement Benefits Form of Payment Election. Before preparing an Order Changing PERA Retirement Benefits Form of Payment Election incident to a divorce, the following background information may be useful to understand why certain items must be included in the Order. The statutory provisions that allow for a change of a form of payment election for PERA retirement benefits upon divorce are NMSA 1978, Sections 10-11-116 and 10-11-136.

PERA is a defined benefit plan, governed by the Public Employees Retirement Act, NMSA 1978, Section 10-11-1, et seq. In a defined benefit plan, retirement benefits are paid when certain eligibility requirements (a combination of age and service credits) are met by the member, regardless of the amount of contributions paid into the plan. The primary PERA benefit is a pension (monthly payment) that may be paid to a member for normal or disability retirement.

Generally, an election of a form of payment cannot be changed after the first pension payment is made. NMSA 1978, Section 10-11-116(A). Also, the named survivor pension beneficiary may not be changed after the first pension payment is made if form of payment B or C is elected, unless the retired member who is being paid under form of payment B or C becomes divorced from the named survivor beneficiary spouse, and a court order dividing PERA benefits is filed pursuant to NMSA 1978, Section 10-11-136. See, NMSA 1978, Section 10-11-116(C).

PERA must be provided with a court order, which complies with the PERA Act and PERA Rule, 2 NMAC 80.1600.30 to change a form of payment election incident to divorce. Upon receipt of such an order and a written determination by the Office of General Counsel that the order complies with PERA's statutes and rules, PERA will change the divorced retiree's pension from form of payment B or C to form of payment A.

Parties are encouraged to submit a proposed Order Changing Form of Payment of PERA Retirement Benefits to the PERA Office of General Counsel for informal pre-approval as to form prior to submitting the Order to the court for signature. To inquire further about these instructions and the model order, contact PERA at the Office of General Counsel, (505) 616-1755.

_____ JUDICIAL DISTRICT

STATE OF NEW MEXICO
COUNTY OF_____

_____,
      Petitioner,

vs.

_____,   Case No._____
      Respondent.

ORDER CHANGING FORM OF PAYMENT
OF PERA RETIREMENT BENEFITS

THE COURT, based upon the parties having agreed to the entry of this Order by stipulation,

and having fully reviewed this matter,

FINDS, ORDERS AND DECREES:

1.   This order allows the change of a retiree's form of payment election after divorce pursuant to the Public Employees Retirement Act, NMSA 1978, Section 10-11-116(C)(1995). A retired member who is being paid a pension under form of payment [B or C], with the member's spouse as the designated survivor pension beneficiary, may elect to have future payments made under form of payment A upon becoming divorced from the named spouse.

2.   The Court has jurisdiction over the subject matter and the parties.

3.   _____, Social Security No. _____, [Petitioner] [Respondent] herein, is a retired member of PERA. [His] [Her] current address is _____.

4. _____ retired under form of payment [B or C] on _____, and designated his former spouse, _____ , [his] [her] survivor beneficiary.

5.   The parties were [divorced] [legally separated] on _____.

6.   PERA shall pay [Member] under form of payment A from among the PERA retirement pension forms specified in NMSA 1978, Section 10-11-117 of the PERA Act. [Member] may designate anyone as the refund beneficiary in the event of [member's] death before the accumulated contributions are paid out.

7. The court reserves jurisdiction in order to correct, amend or enforce this order.

_____
DISTRICT COURT JUDGE

Stipulated by:
[Signatures, names and addresses of attorneys and/or parties]