



A Guide to the New Jersey State and Local Government Pension Plans for the Family Law Attorney

by
Judith A. Deer, Esq.

The New Jersey State benefit pension plans include the Public Employees' Retirement System (PERS), the Teachers' Pension and Annuity Fund (TPAF), the Police and Firemen's Retirement System (PFRS), the Judicial Retirement System (JRS) and the State Police Retirement System (SPRS). All individuals who work either directly for the state of New Jersey or for a county, township or municipality are covered under one of these benefit plans.

These plans are not covered by provisions of the Federal Employee Retirement Income Security Act (ERISA) which applies to private plans. Unlike most private plans, the State does not set up a separate pension account for the Alternate Payee nor does the Alternate Payee receive any of the rights of a Participant of the retirement system. As a result, all Domestic Relations Orders¹ (hereinafter DRO) placed against these pension accounts are essentially "shared interest" DROs.

What does a "shared interest" DRO mean?

1. Commencement of benefits. Benefits to the Alternate Payee will begin only when the Participant has retired and has begun receipt of his or her benefit. Thus, if the Participant chooses to continue working to age 70, rather than retire at the normal retirement age of 60 (or even younger for the PFRS), the Alternate Payee would not receive any pension benefit until such time as the Participant retires. Accordingly, it would be prudent for the attorney representing the Alternate Payee to include language in the Marital Settlement Agreement (MSA) which compels some type of payment from the Participant to the Alternate Payee at an age certain (i.e. no later than age 65) irrespective of whether or not the Participant has retired.

¹ Note the absence of the word "Qualified" in Domestic Relations Orders. A "Qualified" DRO or QDRO is only placed against plans which are qualified under ERISA. Technically, State plans are not required to accept any court orders against the plan; however, New Jersey will accept an Order against a Participant's account.

2. Form of Benefit. Unlike a private pension, the Alternate Payee cannot choose a form of benefit (i.e. a lump sum or a 50% joint and survivor) but rather will receive a portion of the benefit being distributed to the Participant. Only the Participant can choose the form of benefit at the time of his or her retirement. The Alternate Payee cannot designate any beneficiary to his or her portion of the pension.
3. Death of the Parties. The benefit is payable over the Participant's lifetime. The Alternate Payee only will only receive his or her portion of the pension as long as the Participant is alive and collecting a benefit. Upon the death of the Participant, distribution to the Alternate Payee will cease. If the Alternate Payee predeceases the Participant, the amount awarded to the Alternate Payee will revert to the Participant and the Participant will thereafter receive his or her full monthly retirement allowance. When the Participant dies, all payments are terminated, even if the Alternate Payee is still alive. Accordingly, it is imperative for the attorney representing the Alternate Payee (in PERS, TPAF and JRS only) **to include language in the which requires the Participant to elect an Option choice at the time of retirement which provides for a survivor benefit to the Alternate Payee.** (Survivor Options under the PERS and TPAF plans are discussed in more detail below).

If the Participant should die prior to retirement, no benefit is payable to the Alternate Payee. Thus, if representing the Alternate Payee, it is important to include a provision for pre-retirement Group Life Insurance (discussed below).

What benefits of the Participant's pension will (or will not) be divided under the DRO?

1. Gross Benefit. The New Jersey Division of Pension and Benefits will only divide a percentage of a Participant's gross retirement benefit. The gross benefit is the Participant's benefit pre-tax, pre-deductions for any insurance premiums or loan repayments and includes any cost of living adjustment.² Note, however, that the gross benefit is less the amount of any reduction as a result of a Survivor Option election.
2. Cost of Living Adjustments. When a percentage distribution is utilized, the Alternate Payee automatically shares in any cost of living adjustments attributed to the Participant's benefit.³

² The State's reasoning behind this policy is due to past Participant's claiming inappropriate tax dependents and/or taking continuous loans against their accounts, which resulted in significantly reduced net amounts being distributed to the Alternate Payee.

³ Although currently suspended, COLA adjustments may become available in the future.

3. Loan Balances. When drafting the , the attorney should be aware that if the Participant has an outstanding loan against his or her account, the Plan will not allow the Alternate Payee to share in repayment of the loan. The outstanding loan will have no effect on the balance paid to the Alternate Payee. If it is the parties' intention that they share repayment of the loan balance, the repayment is best handled outside of the DRO. For example the Participant should receive a credit for half the value of the loan from some other marital source. If no other source is available, you can determine monthly term to reduce the award to Alternate Payee (i.e. \$200 per month for 20 months).

4. Group Life Insurance. Pre-retirement⁴, Participants of all the systems are enrolled in non-contributory group life insurance which is generally 1½ times the Participant's current salary. Contributory life insurance is available to Participants at a nominal cost which provides a death benefit between 3 and 3½ times the Participant's current salary depending upon the System. As there is no Qualified Pre-retirement Survivor Annuity (QPSA) available in any of these plans, the attorney for the Alternate Payee should negotiate for a portion of this insurance policy. It is important to note that the DRO cannot compel the Division of Pension and Benefits to select a form of beneficiary of this policy for the Participant. The DRO can indicate that the Participant should name the Alternate Payee as the beneficiary and this provision in the DRO will prompt the Plan to remind the Participant; however, the Participant must affirmatively make this election. Thus, the should be worded strongly to compel the Participant and should be binding upon the Participant's heirs and estates.

5. Return of Contribution. Participant's contribute a small percentage of their base salary (generally 5%) toward the pension benefit. This contribution may be paid out in the event of non-vesting or early death. The Alternate Payee should be entitled to his or her proportionate share of this return of funds.

Survivor Options available under the PERS, TPAF and JRS.

Survivor Options are available under the PERS, TPAF and JRS Plans. Be aware, however, that the election of a Survivor Option will reduce the monthly benefit of the Participant. The "cost" (reduction) associated with this election can be borne by either or one party. Here again, as with the Group Life Insurance, the DRO cannot compel the Division of Pension and Benefits to select a form of benefit (i.e. an Option choice) for the Participant. The DRO can indicate that the Participant should choose a particular Option at the time of retirement and this provision in the DRO will prompt the Plan to remind the Participant; however, the Participant must affirmatively make the choice at retirement. Thus, the MSA should be worded strongly to compel the

⁴ A limited amount of post retirement insurance (between 18% and 43% of the Participant's last year salary) is available under certain circumstances.

Participant and should be binding upon the Participant's heirs and estates. There are various Pension Options available to a Participant. A separate Publication of the New Jersey Division of Pensions and Benefits (Fact Sheet #5) is provided which details the available Pension Options to the Participants.

Survivor Options not available under the PFRS and SPRS.

Survivor Options are not available to Participants under the PFRS and SPRS. The survivor benefit available under these plans is only provided to the then present spouse of the deceased Participant. So, if a Participant were married for 25 years, divorced his or her spouse, then remarried for 2 weeks and died, the 2 week spouse would receive the survivor benefit. To counteract this harsh result, it is suggested that a life insurance policy be put in place, naming the Alternate Payee as the beneficiary, equal to the present value of the Participant's benefit.

Purchasing service credits.

Participants are permitted to purchase service credits into the System for various reasons such as prior withdrawn service, military service or service in another comparable system. If the service credits are purchased during the marriage with marital funds, consideration should be given by the attorney for the Alternate Payee to include such purchased credits into the coverture fraction of the marital portion.

Example: A couple is married from 1990 through 2005 while the Participant is participating in the System. The Participant ultimately remains in the System through 2015. The coverture fraction would thus be 15/25 or 60%. During the marriage, however, the Participant purchases 5 years of service credit with marital funds. Thus if the purchased credits are included in the coverture fraction, the fraction would be 20/25 or 80%.

Accordingly, treatment of purchased service credits should be resolved in the as this issue is difficult to resolve post judgment.

Arrears.

If a Participant is already in pay status (receiving his or her pension), the Plan will not automatically pay arrears to the Alternate Payee. Thus, counsel should determine if the Alternate Payee is entitled to arrears and state so specifically in the MSA. A provision can be written in the DRO to re-pay the Alternate Payee arrears.

Voluntary Pension Plans available through State and/or Local Government employment.

1. New Jersey State Employees' Deferred Compensation Plan.
This is a defined contribution plan for State employees only. This plan is administered through the State system and is similar to a 401(k) account. Note: This Plan will not assess earnings and losses. Thus the parties need to account for earnings and/or losses when negotiating the distribution.
2. Deferred Compensation for Individual Townships or Municipalities.
Each county, township or municipality has contribution plans available to their employees. These plans are not administered through the state, but rather through private carriers such as AXA Equitable. These plans, similar to 401(k) accounts, are generally called 403(b)s. It is important to obtain account statements from the Participant in order to locate these accounts.
3. Supplemental Annuity Collective Trust (SACT).
This is a voluntary defined investment program run by the State available to all Participants of the PERS and TPAF. Contributions are invested conservatively in the stock market. The program consists of two separate plans, the SACT- Regular Plan and the SACT-Tax-Sheltered Annuity [a 403(b)]. Statements are necessary to determine participation in these plans.
4. Defined Contribution Retirement Program (DCRP).
Participants of the TPAF and PERS are eligible to participate in this plan which is based upon a salary exceeding the Social Security Maximum. Typically in excess of \$97,500 for 2008. You should look for this Plan when dealing with high salaried Participants. The Participant may not even be aware of his or her participation.