

FREQUENTLY ASKED QUESTIONS
CONCERNING DIVORCE AND DIVIDING RETIREMENT BENEFITS

General Questions

Q: What is a Domestic Relations Order (“DRO”)?

A: A DRO is a Court order that provides SDCERS with direction on how to divide a Member’s benefits.

Q: If a Member got divorced and the court says the former spouse is entitled to a portion of the Member’s SDCERS pension, what is the process of dividing the benefits?

A: If a former spouse is entitled to a portion of Member’s pension, then:

1. SDCERS will need to be joined to the dissolution proceedings in California.
2. The Member and former spouse will need to draft a DRO and provide it to SDCERS for review.
3. SDCERS will review the DRO and provide the Member and former spouse with any corrections that need to be made prior to SDCERS’ approval.
4. SDCERS will approve the DRO.
5. Member and former spouse will sign the DRO and submit it to SDCERS for SDCERS’ CEO’s signature.
6. Member or former spouse will file the DRO with the Court.
7. After the DRO has been filed with the Court, Member or former spouse must provide a copy of the DRO to SDCERS for processing.

Q: Does SDCERS need to be joined if a Member wants to divide their 401k plan?

A: No. SDCERS only handles a Member’s pension and cannot assist you with dividing other retirement plans. If a Member has questions regarding their 401k plan, or other retirement plans, they should contact their Human Resources Department.

Q: How can a Member find out how much money they have on account with SDCERS?

A: Once the Member registers on the Member Portal at www.sdcers.org, they can log into their account, and under Member Account Details, select SDCERS Account Information, and view the “Total Employee Amount” section. This will show the Member how much they have in their retirement account.

Q: What happens if the Member receives a disability retirement?

A: Under California law, disability retirement benefits are generally not considered community property until the Member reaches the point where the Member could have received a service retirement had he or she continued working. At that point, the former spouse generally has a right to a community property share of the benefit. SDCERS requires any proposed DRO to address disability retirement benefits.

Q: Can the former spouse require the Member to retire when the Member becomes eligible for retirement?

A: No. However, the former spouse may be able to obtain a court order requiring the Member to begin paying the former spouse's community property share when the Member becomes eligible to retire. This is referred to as a "Gillmore election," pursuant to *In re Marriage of Gillmore* (1980) 113 Cal.App.3d 319. If the former spouse makes a Gillmore election, the payments come directly from the Member, rather than from SDCERS, until the Member retires and begins receiving their retirement benefit.

Q: If the former spouse makes a Gillmore election and the Member enters DROP, does the former spouse lose their interest in the Member's DROP account?

A: Not necessarily. Unless the DRO provides that the former spouse waives their interest in the DROP account, the former spouse may retain their interest in the DROP account.

Q: Can SDCERS set up a separate account for the former spouse?

A: No. SDCERS cannot set up a separate account for the former spouse. We cannot make payments to the former spouse before the Member retires. At the time of retirement, SDCERS will calculate the former spouse's community property share and begin making payments to the former spouse, provided there is a DRO ordering SDCERS to do so that comports to the Plan documents and SDCERS has been joined to the proceedings.

Q: How can a Member or former spouse determine what percentage of the Member's benefit is community property?

A: A common method used to divide the community property interest in a defined benefit plan is the "time rule formula" (also called the "Brown formula"). This method of division gives the Former Spouse a percentage of the Member's retirement benefits according to the following formula:

$$\frac{\text{service credit earned during marriage}}{\text{total years of service credit}} \times \frac{1}{2} = \text{percentage of Former Spouse's community property share}$$

Questions for Active Members

Q: For an Active Member, will SDCERS provide an estimate of the amount of money a former spouse is entitled to?

A: No. SDCERS will not provide a dollar amount estimate a former spouse is entitled to. However, SDCERS will provide an estimate of former spouse's percentage of the total benefit, if the Member is Active DROP or retired. The Member can use that estimated percentage to estimate the dollar amount that would go to the former spouse.

Q: Can the Member name more than one beneficiary for a survivor benefit?

A: No. The Member can name only one beneficiary for a survivor benefit and that choice is irrevocable once the Member begins receiving a retirement allowance or enters DROP. Thus, if at the time of retirement the Member designates the former spouse to receive a continuance, the Member will not be able to provide a continuance to anyone else. However, the Member can name multiple beneficiaries to receive other death benefits and can change the beneficiaries of those other death benefits

Q: What if SDCERS is joined to a Member's divorce proceedings, does not have a Court-approved DRO, but wants to retire?

A: The Member may turn in their retirement application pending a Court-approved DRO. However, the Member will not be paid a retirement benefit and their retirement application cannot be finalized until SDCERS receives the Court-approved DRO. This is because the DRO will need to tell SDCERS how to divide the benefit and if the Member has to select a specific retirement benefit option. Once the DRO has been entered by the Court and served upon SDCERS, the Member and former spouse will receive payment from SDCERS of their respective portions of the retirement benefit, without interest, retroactive to the effective date of the Member's retirement application.

Q: What if SDCERS is joined to a Member's divorce proceedings, wants to enter DROP, but does not have a Court-approved DRO?

A: The Member may turn in the DROP application pending a Court-approved DRO. However, the DROP application cannot be finalized until SDCERS receives the Court-approved DRO. Once the DRO has been entered by the Court and served upon SDCERS, the Member will be retroactively entered into DROP as of the date of their application.

Questions for Retired & Members in the Deferred Retirement Option Plan (“DROP”)

Q: After the Member has entered DROP or has received their first retirement check, can they change their survivor beneficiary to name someone else?

A: Once the Member has designated a survivor beneficiary and entered DROP or received their first retirement check, the Member cannot name someone else to receive the survivor benefit.

Q: When the Member retired or entered DROP, they selected the maximum benefit (married) and named their spouse to receive the 50% surviving spouse benefit. However, the couple is now divorced. If the Member dies before the former spouse, will the former spouse receive the survivor benefit?

A: Possibly. Per Board Rule 11.00(c), there are four requirements for a former spouse to receive the 50% surviving spouse benefit upon a Member’s death:

- (1) The Member must have retired or entered DROP on or before September 19, 2008,
- (2) The Member and former spouse must be married to each other on the date of retirement,
- (3) The Member must name the former spouse as his or her beneficiary, and
- (4) The Member must have selected the maximum benefit (married) option.

If your situation does not meet one of these requirements, the former spouse will not be eligible for the survivor spouse benefit.

Q: Why can the former spouse be entitled to a portion of the Member’s DROP account if they divorced before the Member entered DROP?

A: Some of the monies credited to the Member’s DROP account may be community property. The Member’s monthly retirement benefit is deposited into their DROP account until they retire and exit DROP. If the former spouse has a community property interest in the Member’s retirement benefit, they may have the same interest in the DROP account, whether the allowance is paid directly to you after retirement or is paid into the DROP account. The same applies to the 13th check and Corbett payments. In addition, the former spouse may be entitled to the interest credited to their community property share of these amounts. SDCERS requires a proposed DRO to address DROP benefits.

Q: When the Member entered DROP, they selected the maximum benefit (married) option. How can they estimate what their monthly pension will be?

A: The Member can log into their Member Portal account to look at their DROP Summary page under Transaction Type and review the DROP Pension Transactions for that month. After the Member has done this, the Member can contact SDCERS Legal Division and request the estimate of the community property percent. Once the Member has received the estimated percent, the Member can multiply it by the Member's DROP Pension Transactions total.

Step 1:

DROP Pension	\$ _____	Date
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Estimate of Monthly Pension		

Step 2:

	Estimate of Monthly Pension
x	Estimate of Community Property Percent
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Former Spouse's Estimated Share of Monthly Pension	

Step 3:

	Estimate of Monthly Pension
-	Former Spouse's Estimated Share of Monthly Pension
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Member's Estimated Share of Monthly Pension	

Questions About Dividing Benefits and Drafting a DRO

Q: Does the Member and former spouse have to use the Brown/Time Rule formula when calculating the community property portion?

A: Not necessarily. The parties can stipulate to or the Court can order a flat monthly dollar amount or flat monthly percentage to be used in lieu of the Brown formula.

Q: If the Member and former spouse do not want to use the Brown formula, who would calculate the flat dollar amount or flat percentage?

A: The former spouse and/or the Member would be responsible with proposing the calculation for the flat dollar amount or flat percentage, but ultimately, it is up to the Court to decide.

Q: Who determines whether service credit purchased by the Member is community property?

A: The Court. Generally, if a Member purchases service credit while they were married, the service credit is considered community property. If a Member purchases service credit before they were married, or after separation, the purchase is generally considered separate property. SDCERS requires purchases of service credit to be addressed in the DRO.

Q: If the former spouse dies before the Member dies, will the former spouse's share of the retirement benefit revert to the Member?

A: Not necessarily. Under California law, the former spouse does not lose their community property interest in the benefit upon the former spouse's death. Accordingly, the DRO must address what will happen if the former spouse predeceases the Member.

Q: What if the Member dies before the former spouse dies?

A: It depends. If the Member is retired when he or she dies and the former spouse is receiving a monthly share of the retirement benefit, the payments to the former spouse will end when the Member dies, unless the Member selected a retirement option providing a survivor benefit to someone and the DRO says the former spouse continues to receive a share of those benefits. This situation will need to be addressed in any proposed DRO. If the former spouse was named as the survivor beneficiary, and qualifies for the benefit under Board Rule 11 discussed above, then the former spouse will begin to receive his or her survivor benefit.

Q: What happens if the Member and former spouse can't come to an agreement to the terms of the DRO?

A: If the Member and former spouse cannot agree to the terms of the DRO, the Member and former spouse will need to go to Court and have the Court decide.