



MEMORANDUM

TO: City Pension Fund for Firefighters and Police Officers in the City of Miami Beach

FROM: Stuart A. Kaufman
Cassandra M. Harvey

RE: Information for Divorcing Members and Spouses of the City Pension Fund for Firefighters and Police Officers in the City of Miami Beach

FILE: 16-0044

DATE: April 2021

In an effort to provide information to Members who are going through the process of marital separation and divorce, the Board of Trustees of the City Pension Fund for Firefighters and Police Officers in the City of Miami Beach (the "Pension Board") has prepared the following summary and materials in order to familiarize you, your spouse and any attorneys or mediators with the pension benefits payable under the retirement system (the "Pension Plan").

It is important to recognize that the Pension Plan is a defined benefit retirement system. This means that monthly pension benefits may not be paid to you or a former spouse unless and until you vest in the Pension Plan and separate from service with the

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City of Miami Beach. In other words, benefits cannot be paid to anyone (you or a spouse) until the Member is eligible, has applied for retirement under the provisions of the Pension Plan and has been granted a benefit. Members are encouraged to review the Pension Plan ordinance, as well as the Summary Plan Description.

The Pension Plan is governed by the Pension Plan document as well as by Chapter 175, Chapter 185, Chapter 112 (Part VII), Florida Statutes, and the Internal Revenue Code. As a governmental plan, the Pension Plan is not covered by ERISA. For this reason, the Pension Plan is not required to and cannot honor Qualified Domestic Relation Orders ("QDROs").¹

As a general rule, the parties to a dissolution of marriage may voluntarily agree to the division of marital property. In the absence of an agreement, a court will make that decision for the parties.

Nevertheless, even if a Member is eligible for retirement, the ability of the Pension Plan to pay benefits *directly* (through the State Disbursement Unit) to a former spouse is limited to court ordered "child support" and "alimony." These payments are usually awarded using an Income Deduction Order ("IDO") or Income Withholding Order ("IWO"). Please be aware, that effective January 1, 2019, changes to the federal tax laws have eliminated tax deductions for alimony if a marriage was dissolved or a property settlement agreement was made on or after January 1, 2019. Modifications to existing orders or agreements on or after January 1, 2019, may be made tax deductible if both parties agree.

In calculating the marital share of retirement benefits, Florida courts have included deferred retirement option plan (DROP) balances.² A DROP is not a separate plan. It is the deferred receipt of defined benefit payments which cannot be paid while a Member is still in service. A participant in DROP is considered "retired" for pension purposes. The Member's benefit is calculated as if he or she had left the City at the time of DROP entry.

¹ See *Board of Trustees v. Vizcaino*, 635 So.2d 1012 (Fla. 1st DCA 1994) (holding that qualified domestic relations order cannot be used to force direct payment to a non-participating spouse of a portion of a spouse's municipal pension benefits in order to achieve equitable distribution of the parties' marital assets); *Alvarez v. Board of Trustees*, 580 So.2d 151 (Fla. 1991) (discussing the use of income deduction orders in relation to governmental cities); *Board of Trustees v. Langford*, 833 So. 2d 230 (Fla. 5th DCA 2002) (holding that the qualified domestic relations order could not be used to force direct payment to ex-wife of portion of former employee's pension benefits). All cases are available upon request.

² *Pullo v. Pullo*, 926 So.2d 448 9 (Fla. 1st DCA 2006); *Nix v. Nix*, 930 So.2d 711 (Fla. 1st DCA 2006).

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Increases in pay do not change the amount of the benefit nor does the Member earn additional credited service. If the Member becomes disabled or dies while a DROP participant, the pension is treated as if the Member retired the day prior to his or her death.

Members may elect to receive the monies in their DROP account by rollover or by lump sum. When a Member elects a rollover, their entire DROP balance is rolled into their qualified retirement account. If the Member's DROP account balance is subject to equitable distribution, a subsequent rollover is then made into the former spouse's retirement account. Members who elect to receive their DROP account balance by lump sum will have the balance deposited into their bank account. Any portion of the balance subject to equitable distribution will then be directed to the former spouse's account.

Under Florida law, pension benefits earned during a marriage are treated as marital property. The Pension Plan is not permitted to pay "equitable distribution" of marital assets directly to a former spouse.¹ For this reason, we have included a sample order entitled "Order Distributing Marital Interests in a Public Employee Retirement Plan," (the "Model Order") that the Pension Board recommends using to distribute the former spouse's share of pension benefits. The Model Order is not necessary for "child support" or "alimony" when an IDO has been entered. The Model Order is only required when "equitable distribution" is to be paid to a former spouse.

As set forth in the Model Order, the preferred method for distribution of retirement benefits is payment by direct deposit from the Pension Plan into a joint account. The trustee of the joint account, to be mutually agreed upon by the parties, would then distribute the husband and wife's respective share of the monthly pension benefit.

Please provide a copy of the Model Order to your spouse and all attorneys who are involved, as it will avoid unnecessary expenses for everyone involved in the process. Once a court order has been entered finalizing the divorce and distributing marital interests, please provide a copy to the Plan's Administrator.

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In sum, pension benefits can be distributed using the Model Order or an IDO. Alternatively, the Court can order or the parties can agree that upon receiving his or her monthly pension payment, the Member will remit the spouse's share to the ex-spouse. Monthly payments are made by direct deposit and many banks offer automatic electronic payment or recurring monthly payments. This arrangement can assure timely receipt by the Member of the monthly benefit and timely payment of the ex-spouse's share.

The Administrator and the Trustees CANNOT give legal advice concerning the division of pension benefits. Members are strongly encouraged to seek experienced counsel.

IN THE CIRCUIT COURT OF THE
JUDICIAL CIRCUIT IN AND FOR
_____ COUNTY, FLORIDA

CASE NO.:

IN RE: The Marriage of

(A) (B)

Petitioner/Husband,

vs.

(C) (D)

Respondent/Wife.

_____ /

**ORDER DISTRIBUTING MARITAL INTERESTS
IN A PUBLIC EMPLOYEE RETIREMENT PLAN**

THIS CAUSE came before the Court on the Petition for Dissolution of Marriage of (A) (B), Petitioner/Husband and (C) (D), Respondent/Wife, and the Court having determined that the spouse has an interest subject to distribution in the retirement benefits of the City Pension Fund for Firefighters and Police Officers in the City of Miami Beach, does hereby

ORDER AND ADJUDGE:

1. That _____, shall, upon eligibility for normal retirement, cause a joint account to be opened at the _____ Bank in the joint name of (A)(B) and (C)(D). The former _____ shall bear the cost of the joint account.

2. The former _____ shall direct the Board of Trustees of the City Pension Fund for Firefighters and Police Officers in the City of Miami Beach, upon

application and approval for retirement benefits, to cause the retirement check to be direct deposited in the joint account established under paragraph 1 of this Order.

3. The trustee of the account shall be directed to distribute the monthly retirement check by sending the sum of _____ dollars to the former _____.

4. In the event that the former has a deferred retirement option plan (DROP) account subject to equitable distribution, after the DROP account balance has been rolled over into the former's qualified retirement account, the trustee of the account shall then direct _____ portion, in the amount of _____, to be rolled over into his/her qualified retirement account held at _____, account number _____.

5. In the event that the former has a DROP account that he/she elected to receive the balance as a lump sum, if subject to equitable distribution, the trustee of the account shall then direct that _____ portion, in the amount of _____, be deposited into his/her bank account held at _____, account number _____.

6. Nothing in this Order shall authorize the receipt by the _____ of any survivorship or other benefits which are not otherwise authorized under the provisions of Chapter 112, Chapter 175, Chapter 185, Florida Statutes, or the City Pension Fund for Firefighters and Police Officers in the City of Miami Beach Plan document.

7. Nothing in this Order shall be construed to require the payment of a retirement benefit to any person who is not otherwise authorized by law to receive such payment.

8. The Court reserves jurisdiction to determine compliance with the provisions of this Order and to make such modifications as may be necessary to accomplish the intent and purpose of this Order.

DONE AND ORDERED in Chambers at, _____ County, Florida,
this ____ day of _____, 20__.

CIRCUIT COURT JUDGE

Copies furnished to:

Counsel for Husband
Counsel for Wife
Counsel for Pension Fund