

MEMORANDUM

TO: Board of Trustees, West Palm Beach Police Pension Fund

FROM: Bonni S. Jensen
Cassandra M. Harvey

RE: Information for Divorcing Members and Spouses of the West Palm Beach Police Pension Fund

FILE: 15-0103

DATE: July 12, 2019

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 West Palm Beach Police Pension Fund (hereinafter 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 plan (hereinafter, the "Pension Plan").

It is important to recognize that the Pension Plan is a defined benefit retirement plan. 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, separate from service with the City of West Palm Beach, and are eligible for payment of a retirement benefit. 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 Retirement Plan is set forth in Chapter 24981, Laws of Florida. The Retirement Plan is also governed by Chapter 185, Chapter 112 (Part VII), Florida Statutes, and the Internal Revenue Code. As a governmental plan, the Retirement Plan is not covered by ERISA. For this reason, the Pension Plan is not required to and cannot honor Qualified Domestic Relation Orders ("QDROs").

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.

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," (hereinafter 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.

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

¹See *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 retirement plans); *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.

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 Pension Office 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 West Palm Beach Police Pension Fund, 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 West Palm Beach Police Pension Fund 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 _____ and the sum of _____ dollars to the former _____.

4. 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 185, Chapter 112, Florida Statutes, or Chapter 24981, Laws of Florida, City of West Palm Beach.

5. 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.

6. 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