

QUALIFIED DOMESTIC RELATIONS ORDERS

Relating to the

South Dakota Retirement System

For any questions regarding QDROs and SDRS please contact:

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What is a Qualified Domestic Relations Order (QDRO)?

A QDRO assigns a right to all or a portion of a benefit payable by a retirement plan that is qualified under federal law. The recipient of the assignment is an alternate payee, usually an ex-spouse of a member.

What is the background of QDROs?

Many retirement plans and tax-sheltered annuities are qualified plans under the Internal Revenue Code (IRC). Also, most private sector plans and, to a more limited extent, public sector plans, are qualified under the Employee Retirement Income Security Act (ERISA).

The IRC (26 USC §401(a)(13)) and ERISA require that a qualified plan's benefits be unassignable and free from legal process. (*See also* SDCL 3-12-115.) The IRC and ERISA make exceptions for QDROs, however. *See* 26 USC §401(a)(13)(A) and (B); SDCL 3-12-115.

Although some retirement plans (government plans and church plans, in particular) need not recognize QDROs, the South Dakota Retirement System does.

What makes an order into a QDRO? (IRC § 414 (p))

A QDRO recognizes an alternate payee and establishes the alternate payee's right to all or a portion of the participant's plan benefits. A QDRO is prepared pursuant to state domestic relations law, but follows federal guidelines.

A QDRO must include the following:

1. The name and last known address of each party.
2. An amount or a portion of the participant's benefit to be assigned to the alternate payee, or at least a means for the retirement system to calculate such an amount or portion.
3. A number of payments or a period of time to which it applies.
4. The retirement plan to which it applies.
5. The following statements of what may not be required:
 - a. Provision of a benefit or form of benefit or any option not otherwise available under the plan;
 - b. Provision for increased benefits (on the basis of an actuarial determination); and

- c. Provision that payment be made to a new alternate payee when the benefits have already have been assigned to another alternate payee by operation of a previous QDRO.

SDRS is a Defined Benefit Plan. What does that mean?

Historically, defined benefit plans have been used by governments and by larger private-sector employers. Pursuant to the law governing SDRS, the employer and employee make contributions to the plan. The South Dakota Investment Council invests plan funds to assure plan growth and stability (actuarial soundness). The plan establishes set or defined benefits to be paid on an actuarially-sound basis. For all practical purposes, the plan guarantees benefits for the employee's life. Benefits are paid through an annuity stream and may include a surviving spouse benefit.

There is no true account value to divide, except under circumstances involving lump-sum payouts. This only occurs if an employee terminates employment and chooses to refund out contributions from the plan thereby forfeiting a retirement benefit. SDRS members are eligible for most or all employer and all employee contributions. Also, if monthly benefits cease before the total of the employer and employee contributions plus an interest have been paid out, the difference may be available to beneficiaries or heirs of the SDRS member.

What is the procedure for getting an order qualified as a QDRO?

The formal process set out in federal law provides that counsel submits an order to the plan for approval and certification of qualified status. Within a short period of time, the plan notifies the participant and the alternate payee (generally through their counsel) of receipt of the order and of the nature of further proceedings. The plan administrator notifies the parties that the order is qualified or is not qualified within a "reasonable" period of time. (Note that a "reasonable" period under ERISA is 18 months; it generally less than thirty days with SDRS, unless there are complications.) Notices from the plan to the parties regarding qualification may be sent to the parties at their respective addresses in the order but are more generally are sent through their counsel.

The informal process is to use the contact information on the first page of this document. SDRS personnel are here to work with you throughout the process to make the procedure as

painless as possible while still meeting federal requirements. SDRS personnel are willing to examine (pre-clear) a draft of the document before it goes to the judge. Sometimes it is necessary to amend an unqualified order that has already been signed by a judge, and SDRS personnel are willing to assist with that process as well. Of course a QDRO can be avoided if other assets are available.

What models for QDROs work well within the SDRS framework? What are the differences among the models?

Model 1. The alternate payee waits until the member retires and then the member's monthly benefits are divided between the parties, usually continuing until one of them dies. (Attachment 1)

Model 2. A scenario like 1, above, is established, except that it is more complex, possibly including benefits to a beneficiary or a lump-sum beneficiary payment. (Attachment 2)

Model 3. A specific amount of funds is established at the time of divorce, generally as part of the property division stipulation. The alternate payee waits until the member retires to receive "installment payments" toward that amount from the member's monthly benefit payments. The installments continue until either the amount is paid in full or one of the parties dies. The base amount may grow via interest. (Attachment 3)

Model 4. A scenario like 3, above, is established, except that it is more complex, again possibly including interest until a specified date (e.g., total payment of the specific amount), benefits to a beneficiary, or a lump-sum beneficiary payment. (Attachment 4)

Model 5. The open-ended percentage formula from *Hautala v. Hautala* may be inserted in place of Paragraph 1.A in Attachments 1 or 2. if the parties so choose. (Attachment 5)

Model 6. Sometimes an SDRS member may decide to refund rather than draw retirement benefits after a differing QDRO has been entered. Of course, the order on record does not recognize that choice, thus requiring amendment of the original QDRO. The alternative is to include a refund option as an additional paragraph in the original QDRO. (Attachment 6)

Model 7. The member terminates employment and refunds out of SDRS. The member's accumulated contributions (employee contributions, employer contributions, and interest) then are available for division between the parties. (Attachment 7)

NOTE: Due to the structure of a defined benefit plan, SDRS **cannot** lump-sum refund a portion of a member's accumulated contributions to an alternate payee, while allowing the member to remain active in the System and eventually draw reduced retirement benefits.

Under SDRS law, the **member** remains the controlling factor. The member must be the one to initiate any lump-sum payout or any start of benefits.

ATTACHMENT 1

STATE OF SOUTH DAKOTA) **IN CIRCUIT COURT**
) **SS.**
COUNTY OF _____) **_____ JUDICIAL CIRCUIT**

JANE DOE,)
) **Civ. 07-**
) **Plaintiff,**)
)
vs.) **QUALIFIED DOMESTIC**
) **RELATIONS ORDER**
JOHN DOE,)
)
) **Defendant.**)
)

WHEREAS, the Parties herein have requested entry of a Qualified Domestic Relations Order (“QDRO”), as defined in 26 USC § 414 (p)(1)(A), to provide for the division and disposition of a portion of the benefits due _____ (the “Participant”) under the South Dakota Retirement System (the “Plan”) and recognizing the rights of _____ (the “Alternate Payee”) in such benefits pursuant to the terms set forth in this Order; and

WHEREAS, the Court holds jurisdiction over the Parties and the subject matter herein; and

WHEREAS, the Court has heard the arguments of counsel and has reviewed the records and files herein, including the records and representations from the office of the Plan;

THEREFORE, the Court finds as follows:

1. The Participant has accrued certain benefits under the Plan during the Participant's marriage to the Alternate Payee. The Participant's benefits with the Plan thus represent an asset of the marital estate and are subject to an equitable division by the Court.

2. The Plan is a retirement income account, as defined in 26 USC § 401(a).

3. In order to recognize an equitable division of the Participant's benefits, the Plan requires a Qualified Domestic Relations Order within the meaning of 26 USC § 414 (p).

4. The name, last known mailing address, and telephone number of the Participant are:

Name:

Address:

Telephone Number:

5. The name, last known mailing address, and telephone number of the Alternate Payee are:

Name:

Address:

Telephone Number:

Based upon the foregoing Findings and good cause appearing therefore, it is hereby ORDERED:

1. A. The Alternate Payee shall receive a separate monthly payment (assignment) from the Plan equal to \$_____ [alt.: _____ percent] of the benefit that the Participant otherwise would receive from the Plan on a monthly basis. The monies shall be paid simultaneously with the benefit payment from the Plan to the Participant and shall continue until the earlier of the Alternate Payee's death or the Participant's death. After this assignment, the Participant shall have no remaining rights to the portion assigned. If the Alternate Payee does predecease the Participant, then and in that event all of the monthly benefit payment from the Plan thereafter shall be paid to the Participant.

B. In the event that the retirement benefits owing to the Participant from the Plan increase in the future, the payment to the Alternate Payee likewise shall [alt.: nonetheless shall not] increase.

2. The Alternate Payee shall be responsible for payment of income tax and any penalties due on the monies received by the Alternate Payee from the Plan pursuant to this Order.

3. The Alternate Payee shall keep the Plan Administrator informed of the Alternate Payee's current address and telephone number. Notice of any change of name, address, or telephone number of the Alternate Payee shall be given in writing to the Plan Administrator at the address of the Plan's business office.

4. The Alternate Payee shall provide such written requests for payment, consents to payment, and receipts for payment as the Plan Administrator requires.

5. The Plan Administrator and the Alternate Payee may modify any provision of this Order by written agreement without further Court approval so long as the modification has no adverse effect or no additional substantive impact on the Participant. The Plan Administrator may modify any terms of this Order to the extent necessary to comply with applicable law.

6. In the event of a conflict between this Order and the terms of the Plan, the terms of the Plan shall prevail. In the event of a question of interpretation of the Plan's provisions, the Plan Administrator's interpretation shall prevail.

7. In the event this Order is submitted to the Plan Administrator and is held not to be a Qualified Domestic Relations Order within the meaning of 26 USC § 414 (p), the Court reserves the right to enter a revised Order that will qualify as a Qualified Domestic Relations Order. The Court retains jurisdiction to maintain this Order as a Qualified Domestic Relations Order and to modify the Order, subject to the provisions of section 5, above.

8. The Alternate Payee and the Participant shall hold the Plan and its fiduciaries harmless from any liabilities which arise from following the provisions of this Order, including any attorney's fees which may be incurred in connection with any claims which are asserted because the Plan honors this Order. The Plan and its fiduciaries are not be responsible for any attorney's fees incurred by the Participant or the Alternate Payee in connection with obtaining this Order or enforcing this Order.

9. Pursuant to ARSD 62:01:07:07, obligations imposed upon the Plan to make payments pursuant to the provisions of this Order are only prospective in nature, beginning from the date of the Order.

10. To the extent that the Plan pays to the Participant any benefits that are payable to the Alternate Payee under this Order, the Participant is deemed to be a trustee holding the benefits in constructive trust for the benefit of the Alternate Payee. The Participant shall pay such benefits to the Alternate Payee within thirty days of receipt of such benefits. To the extent that the Plan

pays to the Alternate Payee any benefits that are payable to the Participant under this Order, the Alternate Payee is deemed to be a trustee holding the benefits in constructive trust for the benefit of the Participant. The Alternate Payee shall pay such benefits to the Participant within thirty days of receipt of such benefits.

11. If the Plan is terminated and all benefits are distributed, amounts due under this Order immediately shall be distributable.

12. Anything in this Order to the contrary notwithstanding, in no event shall the Plan be required (1) to provide any type or form of benefit or any option not otherwise provided under the Plan; (2) to provide increased benefits, as determined on the basis of actuarial value; or (3) to pay benefits to the Alternate Payee which are required to be paid to any other alternate payee under any other order previously determined to be a qualified domestic relations order.

13. The Parties intend that this Order will qualify as a Qualified Domestic Relations Order pursuant to the provisions of 26 USC § 414 (p) and that it shall be interpreted and administered in conformity with that section.

Dated this _____ day of _____, _____.

BY THE COURT:

Circuit Court Judge

ATTEST:

_____, Clerk of Courts

BY: _____

(SEAL)

ATTACHMENT 2

STATE OF SOUTH DAKOTA) **IN CIRCUIT COURT**
) **SS.**
COUNTY OF _____) **_____ JUDICIAL CIRCUIT**

JANE DOE,)
) **Civ. 07-**
) **Plaintiff,**)
)
vs.) **QUALIFIED DOMESTIC**
) **RELATIONS ORDER**
JOHN DOE,)
)
) **Defendant.**)
)

WHEREAS, the Parties herein have requested entry of a Qualified Domestic Relations Order (“QDRO”), as defined in 26 USC § 414 (p)(1)(A), to provide for the division and disposition of a portion of the benefits due _____ (the “Participant”) under the South Dakota Retirement System (the “Plan”) and recognizing the rights of _____ (the “Alternate Payee”) in such benefits pursuant to the terms set forth in this Order; and

WHEREAS, the Court holds jurisdiction over the Parties and the subject matter herein; and

WHEREAS, the Court has heard the arguments of counsel and has reviewed the records and files herein, including the records and representations from the office of the Plan;

THEREFORE, the Court finds as follows:

1. The Participant has accrued certain benefits under the Plan during the Participant's marriage to the Alternate Payee. The Participant's benefits with the Plan thus represent an asset of the marital estate and are subject to an equitable division by the Court.

2. The Plan is a retirement income account, as defined in 26 USC § 401(a).

3. In order to recognize an equitable division of the Participant's benefits, the Plan requires a Qualified Domestic Relations Order within the meaning of 26 USC § 414 (p).

4. The name, last known mailing address, and telephone number of the Participant are:

Name:

Address:

Telephone Number:

5. The name, last known mailing address, and telephone number of the Alternate Payee are:

Name:

Address:

Telephone Number:

Based upon the foregoing Findings and good cause appearing therefore, it is hereby ORDERED:

1. A. The Alternate Payee shall receive a separate monthly payment (assignment) from the Plan equal to \$_____ [alt.: _____ percent] of the benefit that the Participant otherwise would receive from the Plan on a monthly basis. The monies shall be paid simultaneously with the benefit payment from the Plan to the Participant and shall continue as outlined herein. After this assignment, the Participant shall have no remaining rights to the portion assigned.

B. In the event that the retirement benefits owing to the Participant from the Plan increase in the future, the payment to the Alternate Payee likewise shall [alt.: nonetheless shall not] increase.

C. If the Alternate Payee dies before distribution begins under this Order, the assigned payments under this Order shall be paid to the Alternate Payee's beneficiary to the extent that the Plan by law may pay such assigned benefits to the Alternate Payee's beneficiary. If the Alternate Payee dies after distributions have begun under this Order, the assigned payments shall then be continued by payment to the Alternate Payee's beneficiary, to the extent that the Plan by law may pay such assigned benefits to the Alternate Payee's beneficiary. In no

event shall the death of the Alternate Payee, either before or after distributions have begun under this Order, result in any increase of benefits to the Participant.

D. If the Participant dies either before or after distributions have begun under this Order, and a lump-sum beneficiary payment is available pursuant to the provisions of SDCL 3-12-110, \$_____, or so much as is available, [alt.: _____ percent] of such lump-sum payment shall be paid to the Alternate Payee as a primary beneficiary or to the Alternate Payee's beneficiary. The Participant shall maintain the Alternate Payee as a primary beneficiary in Plan records to the extent of the lump-sum payment set forth herein.

2. The Alternate Payee shall be responsible for payment of income tax and any penalties due on the monies received by the Alternate Payee from the Plan pursuant to this Order.

3. The Alternate Payee shall keep the Plan Administrator informed of the Alternate Payee's current address and telephone number. Notice of any change of name, address or telephone number of the Alternate Payee shall be given in writing to the Plan Administrator at the address of the Plan's business office.

4. The Alternate Payee shall provide such written requests for payment, consents to payment and receipts for payment as the Plan Administrator requires.

5. The Plan Administrator and the Alternate Payee may modify any provision of this Order by written agreement without further Court approval so long as the modification has no adverse effect or no additional substantive impact on the Participant. The Plan Administrator may modify any terms of this Order to the extent necessary to comply with applicable law.

6. In the event of a conflict between this Order and the terms of the Plan, the terms of the Plan shall prevail. In the event of a question of interpretation of the Plan's provisions, the Plan Administrator's interpretation shall prevail.

7. In the event this Order is submitted to the Plan Administrator and is held not to be a Qualified Domestic Relations Order within the meaning of 26 USC § 414 (p), the Court reserves the right to enter a revised Order that will qualify as a Qualified Domestic Relations Order. The Court retains jurisdiction to maintain this Order as a Qualified Domestic Relations Order and to modify the Order, subject to the provisions of section 5, above.

8. The Alternate Payee and the Participant shall hold the Plan and its fiduciaries harmless from any liabilities which arise from following the provisions of this Order, including any attorney's fees which may be incurred in connection with any claims which are asserted because

the Plan honors this Order. The Plan and its fiduciaries shall not be responsible for any attorney's fees incurred by the Participant or the Alternate Payee in connection with obtaining this Order or enforcing this Order.

9. Pursuant to ARSD 62:01:07:07, obligations imposed upon the Plan to make payments pursuant to the provisions of this Order are only prospective in nature, beginning from the date of the Order.

10. To the extent that the Plan pays to the Participant any benefits that are payable to the Alternate Payee under this Order, the Participant is deemed to be a trustee holding the benefits in constructive trust for the benefit of the Alternate Payee. The Participant shall pay such benefits to the Alternate Payee within thirty days of receipt of such benefits. To the extent that the Plan pays to the Alternate Payee any benefits that are payable to the Participant under this Order, the Alternate Payee is deemed to be a trustee holding the benefits in constructive trust for the benefit of the Participant. The Alternate Payee shall pay such benefits to the Participant within thirty days of receipt of such benefits.

11. If the Plan is terminated and all benefits are distributed, amounts due under this Order immediately shall be distributable.

12. Anything in this Order to the contrary notwithstanding, in no event shall the Plan be required (1) to provide any type or form of benefit or any option not otherwise provided under the Plan; (2) to provide increased benefits, as determined on the basis of actuarial value; or (3) to pay benefits to the Alternate Payee which are required to be paid to any other alternate payee under any other order previously determined to be a qualified domestic relations order.

13. The Parties intend that this Order will qualify as a Qualified Domestic Relations Order pursuant to the provisions of 26 USC § 414 (p) and that it shall be interpreted and administered in conformity with that section.

Dated this _____ day of _____, _____.

BY THE COURT:

Circuit Court Judge

ATTEST:

_____, Clerk of Courts

BY: _____

(SEAL)

ATTACHMENT 3

STATE OF SOUTH DAKOTA) **IN CIRCUIT COURT**
) **SS.**
COUNTY OF _____) **_____ JUDICIAL CIRCUIT**

JANE DOE,)
) **Civ. 07-**
) **Plaintiff,**)
)
vs.) **QUALIFIED DOMESTIC**
) **RELATIONS ORDER**
JOHN DOE,)
)
) **Defendant.**)
)

WHEREAS, the Parties herein have requested entry of a Qualified Domestic Relations Order (“QDRO”), as defined in 26 USC § 414 (p)(1)(A), to provide for the division and disposition of a portion of the benefits due _____ (the “Participant”) under the South Dakota Retirement System (the “Plan”) and recognizing the rights of _____ (the “Alternate Payee”) in such benefits pursuant to the terms set forth in this Order; and

WHEREAS, the Court holds jurisdiction over the Parties and the subject matter herein; and

WHEREAS, the Court has heard the arguments of counsel and has reviewed the records and files herein, including the records and representations from the office of the Plan;

THEREFORE, the Court finds as follows:

1. The Participant has accrued certain benefits under the Plan during the Participant's marriage to the Alternate Payee. The Participant's benefits with the Plan thus represent an asset of the marital estate and are subject to an equitable division by the Court.

2. The Plan is a retirement income account, as defined in 26 USC § 401(a).

3. In order to recognize an equitable division of the Participant's benefits, the Plan requires a Qualified Domestic Relations Order within the meaning of 26 USC § 414 (p).

4. The name, last known mailing address, and telephone number of the Participant are:

Name:

Address:

Telephone Number:

5. The name, last known mailing address, and telephone number of the Alternate Payee are:

Name:

Address:

Telephone Number:

Based upon the foregoing Findings and good cause appearing therefore, it is hereby ORDERED:

1. A. The Alternate Payee shall receive a separate monthly payment (assignment) from the Plan equal to \$_____ [alt.: _____ percent of the initial benefit] that the Participant otherwise would receive from the Plan on a monthly basis. The monies shall be paid simultaneously with the benefit payment from the Plan to the Participant and shall continue until the Alternate Payee has received payments totaling \$_____ [option: , plus interest at a rate of _____ percent, compounded annually, starting the effective date of this Order,] until the Alternate Payee's death, or until the Participant's death, whichever of these events occurs first. After this assignment, the Participant shall have no remaining rights to the portion assigned. If the amount specified herein is paid in full or if the Alternate Payee does predecease the Participant, the total monthly benefit payment from the Plan thereafter shall be paid to the Participant.

B. In the event that the retirement benefits owing to the Participant from the Plan increase in the future, the payment to the Alternate Payee likewise shall [alt.: nonetheless shall not] increase.

2. The Alternate Payee shall be responsible for payment of income tax and any penalties due on the monies received by the Alternate Payee from the Plan pursuant to this Order.

3. The Alternate Payee shall keep the Plan Administrator informed of the Alternate Payee's current address and telephone number. Notice of any change of name, address or telephone number of the Alternate Payee shall be given in writing to the Plan Administrator at the address of the Plan's business office.

4. The Alternate Payee shall provide such written requests for payment, consents to payment and receipts for payment as the Plan Administrator requires.

5. The Plan Administrator and the Alternate Payee may modify any provision of this Order by written agreement without further Court approval so long as the modification has no adverse effect or no additional substantive impact on the Participant. The Plan Administrator may modify any terms of this Order to the extent necessary to comply with applicable law.

6. In the event of a conflict between this Order and the terms of the Plan, the terms of the Plan shall prevail. In the event of a question of interpretation of the Plan's provisions, the Plan Administrator's interpretation shall prevail.

7. In the event this Order is submitted to the Plan Administrator and is held not to be a Qualified Domestic Relations Order within the meaning of 26 USC § 414 (p), the Court reserves the right to enter a revised Order that will qualify as a Qualified Domestic Relations Order. The Court retains jurisdiction to maintain this Order as a Qualified Domestic Relations Order and to modify the Order, subject to the provisions of section 5, above.

8. The Alternate Payee and the Participant shall hold the Plan and its fiduciaries harmless from any liabilities which arise from following the provisions of this Order, including any attorney's fees which may be incurred in connection with any claims which are asserted because the Plan honors this Order. The Plan and its fiduciaries shall not be responsible for any attorney's fees incurred by the Participant or the Alternate Payee in connection with obtaining this Order or enforcing this Order.

9. Pursuant to ARSD 62:01:07:07, obligations imposed upon the Plan to make payments pursuant to the provisions of this Order are only prospective in nature, beginning from the date of the Order.

10. To the extent that the Plan pays to the Participant any benefits that are payable to the Alternate Payee under this Order, the Participant is deemed to be a trustee holding the benefits in constructive trust for the benefit of the Alternate Payee. The Participant shall pay such benefits to the Alternate Payee within thirty days of receipt of such benefits. To the extent that the Plan pays to the Alternate Payee any benefits that are payable to the Participant under this Order, the Alternate Payee is deemed to be a trustee holding the benefits in constructive trust for the benefit of the Participant. The Alternate Payee shall pay such benefits to the Participant within thirty days of receipt of such benefits.

11. If the Plan is terminated and all benefits are distributed, amounts due under this Order immediately shall be distributable.

12. Anything in this Order to the contrary notwithstanding, in no event shall the Plan be required (1) to provide any type or form of benefit or any option not otherwise provided under the Plan; (2) to provide increased benefits, as determined on the basis of actuarial value; or (3) to pay benefits to the Alternate Payee which are required to be paid to any other alternate payee under any other order previously determined to be a qualified domestic relations order.

13. The Parties intend that this Order will qualify as a Qualified Domestic Relations Order pursuant to the provisions of 26 USC § 414 (p) and that it shall be interpreted and administered in conformity with that section.

Dated this _____ day of _____, _____.

BY THE COURT:

Circuit Court Judge

ATTEST:

_____, Clerk of Courts

BY: _____

(SEAL)

ATTACHMENT 4

STATE OF SOUTH DAKOTA) **IN CIRCUIT COURT**
) **SS.**
COUNTY OF _____) **_____ JUDICIAL CIRCUIT**

JANE DOE,)
) **Civ. 07-**
)
) **Plaintiff,**)
)
)
vs.) **QUALIFIED DOMESTIC**
) **RELATIONS ORDER**
)
JOHN DOE,)
)
)
) **Defendant.**)
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WHEREAS, the Parties herein have requested entry of a Qualified Domestic Relations Order (“QDRO”), as defined in 26 USC § 414 (p)(1)(A), to provide for the division and disposition of a portion of the benefits due _____ (the “Participant”) under the South Dakota Retirement System (the “Plan”) and recognizing the rights of _____ (the “Alternate Payee”) in such benefits pursuant to the terms set forth in this Order; and

WHEREAS, the Court holds jurisdiction over the Parties and the subject matter herein; and

WHEREAS, the Court has heard the arguments of counsel and has reviewed the records and files herein, including the records and representations from the office of the Plan;

THEREFORE, the Court finds as follows:

1. The Participant has accrued certain benefits under the Plan during the Participant's marriage to the Alternate Payee. The Participant's benefits with the Plan thus represent an asset of the marital estate and are subject to an equitable division by the Court.

2. The Plan is a retirement income account, as defined in 26 USC § 401(a).

3. In order to recognize an equitable division of the Participant's benefits, the Plan requires a Qualified Domestic Relations Order within the meaning of 26 USC § 414 (p).

4. The name, last known mailing address, and telephone number of the Participant are:

Name:

Address:

Telephone Number:

5. The name, last known mailing address, and telephone number of the Alternate Payee are:

Name:

Address:

Telephone Number:

Based upon the foregoing Findings and good cause appearing therefore, it is hereby ORDERED:

1. A. The Alternate Payee shall receive a separate monthly payment (assignment) from the Plan equal to \$_____ [alt.: _____ percent of the initial benefit] that the Participant otherwise would receive from the Plan on a monthly basis. The monies shall be paid simultaneously with the benefit payment from the Plan to the Participant and shall continue until the Alternate Payee has received payments totaling \$_____ [option: plus interest at a rate of _____ percent, compounded annually, starting the effective date of this Order]. After this assignment, the Participant shall have no remaining rights to the portion assigned. If the amount specified herein is paid in full, the total monthly benefit payment from the Plan thereafter shall be paid to the Participant.

B. In the event that the retirement benefits owing to the Participant from the Plan increase in the future, the payment to the Alternate Payee shall [alt.: nonetheless shall not] increase.

C. If the Alternate Payee dies before distribution begins under this Order, the assigned payments under this Order shall be paid to the Alternate Payee's beneficiary until the amount

specified in subparagraph A, above, has been satisfied and to the extent that the Plan by law may pay such assigned benefits to the Alternate Payee's beneficiary. If the Alternate Payee dies after distributions have begun under this Order, the assigned payments shall then be continued by payment to the Alternate Payee's beneficiary until the amount specified in subparagraph A, above, has been satisfied and to the extent that the Plan by law may pay such assigned benefits to the Alternate Payee's beneficiary. In no event shall the death of the Alternate Payee, either before or after distributions have begun under this Order, result in any increase of benefits to the Participant.

D. If the Participant dies either before or after distributions have begun under this Order, and a lump-sum beneficiary payment is available pursuant to the provisions of SDCL 3-12-110, any remaining amount due toward the amount specified in subparagraph A, above, shall be paid from such lump-sum payment to the Alternate Payee as a primary beneficiary or to the Alternate Payee's beneficiary. The Participant shall maintain the Alternate Payee as a primary beneficiary in Plan records to the extent necessary toward payment of the lump-sum payment as set forth herein. If any such lump-sum payment is not sufficient to pay the remaining amount due toward the amount specified in subparagraph A, above, the payment of such amount nonetheless shall be deemed satisfied and the Plan is under no obligation to pay and shall not pay any such deficit.

2. The Alternate Payee shall be responsible for payment of income tax and any penalties due on the monies received by the Alternate Payee from the Plan pursuant to this Order.

3. The Alternate Payee shall keep the Plan Administrator informed of the Alternate Payee's current address and telephone number. Notice of any change of name, address or telephone number of the Alternate Payee shall be given in writing to the Plan Administrator at the address of the Plan's business office.

4. The Alternate Payee shall provide such written requests for payment, consents to payment and receipts for payment as the Plan Administrator requires.

5. The Plan Administrator and the Alternate Payee may modify any provision of this Order by written agreement without further Court approval so long as the modification has no adverse effect or no additional substantive impact on the Participant. The Plan Administrator may modify any terms of this Order to the extent necessary to comply with applicable law.

6. In the event of a conflict between this Order and the terms of the Plan, the terms of the Plan shall prevail. In the event of a question of interpretation of the Plan's provisions, the Plan Administrator's interpretation shall prevail.

7. In the event this Order is submitted to the Plan Administrator and is held not to be a Qualified Domestic Relations Order within the meaning of 26 USC § 414 (p), the Court reserves the right to enter a revised Order that will qualify as a Qualified Domestic Relations Order. The Court retains jurisdiction to maintain this Order as a Qualified Domestic Relations Order and to modify the Order, subject to the provisions of section 5, above.

8. The Alternate Payee and the Participant shall hold the Plan and its fiduciaries harmless from any liabilities which arise from following the provisions of this Order, including any attorney's fees which may be incurred in connection with any claims which are asserted because the Plan honors this Order. The Plan and its fiduciaries shall not be responsible for any attorney's fees incurred by the Participant or the Alternate Payee in connection with obtaining this Order or enforcing this Order.

9. Pursuant to ARSD 62:01:07:07, obligations imposed upon the Plan to make payments pursuant to the provisions of this Order are only prospective in nature, beginning from the date of the Order.

10. To the extent that the Plan pays to the Participant any benefits that are payable to the Alternate Payee under this Order, the Participant is deemed to be a trustee holding the benefits in constructive trust for the benefit of the Alternate Payee. The Participant shall pay such benefits to the Alternate Payee within thirty days of receipt of such benefits. To the extent that the Plan pays to the Alternate Payee any benefits that are payable to the Participant under this Order, the Alternate Payee is deemed to be a trustee holding the benefits in constructive trust for the benefit of the Participant. The Alternate Payee shall pay such benefits to the Participant within thirty days of receipt of such benefits.

11. If the Plan is terminated and all benefits are distributed, amounts due under this Order immediately shall be distributable.

12. Anything in this Order to the contrary notwithstanding, in no event shall the Plan be required (1) to provide any type or form of benefit or any option not otherwise provided under the Plan; (2) to provide increased benefits, as determined on the basis of actuarial value; or (3) to

pay benefits to the Alternate Payee which are required to be paid to any other alternate payee under any other order previously determined to be a qualified domestic relations order.

13. The Parties intend that this Order will qualify as a Qualified Domestic Relations Order pursuant to the provisions of 26 USC § 414 (p) and that it shall be interpreted and administered in conformity with that section.

Dated this _____ day of _____, _____.

BY THE COURT:

Circuit Court Judge

ATTEST:

_____, Clerk of Courts

BY: _____

(SEAL)

ATTACHMENT 5

Formula for division of lifetime benefits

(see *Hautala v. Hautala*, 417 N.W.2d 879 (S.D. 1988) at Opinion Footnote 1)

1. A. Upon the Participant's application for retirement benefits from the Plan, said benefits shall be divided to assign to the Alternate Payee half of the benefits accrued during that time period when the Participant and the Alternate Payee were married and the Participant was participating in the Plan. The division of benefits shall be based on a fraction, the numerator of which is _____ months (the number of months that the Participant and the Alternate Payee were married while the Participant was participating in the Plan) and the denominator of which shall be the total number of months in which the Participant eventually participates in the Plan, all divided by two (2). The fraction shall be stated as a percentage and is illustrated as follows:

$$\frac{\text{number of months of marriage while participating in the Plan}}{\text{total months of participation in the Plan}} \div 2$$

The monies shall be paid simultaneously with the benefit payment from the Plan to the Participant and shall continue as outlined herein [alt.: shall continue until the earlier of the Alternate Payee's death or the Participant's death]. After this assignment, the Participant shall have no remaining rights to the portion assigned.

For example, if the Participant and the Alternate Payee were married for 120 months while the Participant participated in the Plan and the Participant eventually accrues 240 months of service before retiring, that portion of the Participant's retirement benefit assigned to the Alternate Payee would be 25%, as follows:

$$\frac{120 \text{ months}}{240 \text{ months}} \div 2 = .25 \text{ (or 25\%)}$$

ATTACHMENT 6

Refund language -- Optional language for Attachments 1, 2, 3 and 4

In the event that the Participant chooses to refund the Participant's accumulated contributions from the Plan rather than draw a retirement benefit, the Alternate Payee* is hereby awarded \$_____ [alt.: _____ percent] [option: , plus interest at a rate of _____ percent, compounded annually, starting the effective date of this Order] of the Participant's accumulated contributions in the Plan and the Plan Administrator is ordered to transfer said interest to the Alternate Payee** at the earliest date possible after the application for refund has been received by the Plan. The Participant is hereby awarded the remainder of the Participant's accumulated contributions in the Plan and the Plan Administrator is ordered to transfer said interest to the Participant at the earliest date possible after the application for refund has been received by the Plan. The Alternate Payee* shall be eligible to receive refund of the accumulated contributions awarded under this Order on the date the remaining accumulated contributions may be refunded to the Participant under the provisions of the Plan. Upon full refund of the accumulated contributions awarded to the Alternate Payee* and to the Participant, the Plan shall thereafter be discharged from all responsibility, obligation, or duty with respect to the Participant and to the Alternate Payee* under this Order.

*optional addition: "or the Alternate Payee's beneficiary" (applies to Attachments 2 and 4)

**optional addition: "or to the Alternate Payee's beneficiary" (applies to Attachments 2 and 4)

ATTACHMENT 7

STATE OF SOUTH DAKOTA) **IN CIRCUIT COURT**
) **SS.**
COUNTY OF _____) **_____ JUDICIAL CIRCUIT**

JANE DOE,)
) **Civ. 07-**
) **Plaintiff,**)
)
vs.) **QUALIFIED DOMESTIC**
) **RELATIONS ORDER**
JOHN DOE,)
)
) **Defendant.**)
)

WHEREAS, the Parties herein have requested entry of a Qualified Domestic Relations Order (“QDRO”), as defined in 26 USC § 414 (p)(1)(A), to provide for the division and disposition of a portion of the benefits due _____ (the “Participant”) under the South Dakota Retirement System (the “Plan”) and recognizing the rights of _____ (the “Alternate Payee”) in such benefits pursuant to the terms set forth in this Order; and

WHEREAS, the Court holds jurisdiction over the Parties and the subject matter herein; and

WHEREAS, the Court has heard the arguments of counsel and has reviewed the records and files herein, including the records and representations from the office of the Plan;

THEREFORE, the Court finds as follows:

1. The Participant has accrued certain benefits under the Plan during the Participant's marriage to the Alternate Payee. The Participant's benefits with the Plan thus represent an asset of the marital estate and are subject to an equitable division by the Court.

2. The Plan is a retirement income account, as defined in 26 USC § 401(a).

3. In order to recognize an equitable division of the Participant's benefits, the Plan requires a Qualified Domestic Relations Order within the meaning of 26 USC § 414 (p).

4. The name, last known mailing address, and telephone number of the Participant are:

Name:

Address:

Telephone Number:

5. The name, last known mailing address, and telephone number of the Alternate Payee are:

Name:

Address:

Telephone Number:

Based upon the foregoing Findings and good cause appearing therefore, it is hereby ORDERED:

1. A. The Alternate Payee is hereby awarded \$_____ [alt.: _____ percent] [option: , plus interest at a rate of _____ percent, compounded annually, starting the effective date of this Order,] of the Participant's accumulated contributions in the Plan and the Plan Administrator is ordered to transfer said interest to the Alternate Payee at the earliest date possible under the provisions of the Plan.

B. The Participant is hereby awarded the remainder of the Participant's accumulated contributions in the Plan and the Plan Administrator is ordered to transfer said interest to the Participant at the earliest date possible under the provisions of the Plan.

C. The Alternate Payee shall be eligible to receive refund of the accumulated contributions awarded under this Order on the earliest date contributions can be refunded to the Participant under the provisions of the Plan.

D. The Participant shall be eligible to receive refund of the accumulated contributions awarded under this Order on the earliest date contributions can be refunded to the Participant under the provisions of the Plan.

E. Upon full refund of the accumulated contributions awarded to the Alternate Payee and to the Participant, the Plan shall thereafter be discharged from all responsibility, obligation, or duty with respect to the Participant and to the Alternate Payee.

F. Forthwith and not more than _____ days after the date this Order is entered or after the Participant ceases active participation in the Plan, whichever is later, the Participant shall apply to the Plan for the disbursement of the Participant's accumulated contributions to said Plan in conformity with this Order and shall execute any and all Plan documentation required to facilitate the implementation of this Order.

2. The Alternate Payee shall be responsible for payment of income tax and any penalties due on the monies received by the Alternate Payee from the Plan pursuant to this Order.

3. Until there is distribution of accumulated contributions to the Alternate Payee as outlined and ordered above, the Alternate Payee shall keep the Plan Administrator informed of the Alternate Payee's current address and telephone number. Notice of any change of name, address or telephone number of the Alternate Payee shall be given in writing to the Plan Administrator at the address of the Plan's business office.

4. The Alternate Payee shall provide such written requests for payment, consents to payment and receipts for payment as the Plan Administrator requires.

5. The Plan Administrator and the Alternate Payee may modify any provision of this Order by written agreement without further Court approval so long as the modification has no adverse effect or no additional substantive impact on the Participant. The Plan Administrator may modify any terms of this Order to the extent necessary to comply with applicable law.

6. In the event of a conflict between this Order and the terms of the Plan, the terms of the Plan shall prevail. In the event of a question of interpretation of the Plan's provisions, the Plan Administrator's interpretation shall prevail.

7. In the event this Order is submitted to the Plan Administrator and is held not to be a Qualified Domestic Relations Order within the meaning of 26 USC § 414 (p), the Court reserves the right to enter a revised Order that will qualify as a Qualified Domestic Relations Order. The Court retains jurisdiction to maintain this Order as a Qualified Domestic Relations Order and to modify the Order, subject to the provisions of section 5, above.

8. The Alternate Payee and the Participant shall hold the Plan and its fiduciaries harmless from any liabilities which arise from following the provisions of this Order, including any

attorney's fees which may be incurred in connection with any claims which are asserted because the Plan honors this Order. The Plan and its fiduciaries shall not be responsible for any attorney's fees incurred by the Participant or the Alternate Payee in connection with obtaining this Order or enforcing this Order.

9. Pursuant to ARSD 62:01:07:07, obligations imposed upon the Plan to make payments pursuant to the provisions of this Order are only prospective in nature, beginning from the date of the Order.

10. To the extent that the Plan pays to the Participant any benefits that are payable to the Alternate Payee under this Order, the Participant is deemed to be a trustee holding the benefits in constructive trust for the benefit of the Alternate Payee. The Participant shall pay such benefits to the Alternate Payee within thirty days of receipt of such benefits. To the extent that the Plan pays to the Alternate Payee any benefits that are payable to the Participant under this Order, the Alternate Payee is deemed to be a trustee holding the benefits in constructive trust for the benefit of the Participant. The Alternate Payee shall pay such benefits to the Participant within thirty days of receipt of such benefits.

11. If the Plan is terminated and all benefits are distributed, amounts due under this Order immediately shall be distributable.

12. Anything in this Order to the contrary notwithstanding, in no event shall the Plan be required (1) to provide any type or form of benefit or any option not otherwise provided under the Plan; (2) to provide increased benefits, as determined on the basis of actuarial value; or (3) to pay benefits to the Alternate Payee which are required to be paid to any other alternate payee under any other order previously determined to be a qualified domestic relations order.

13. The Parties intend that this Order will qualify as a Qualified Domestic Relations Order pursuant to the provisions of 26 USC § 414 (p) and that it shall be interpreted and administered in conformity with that section.

Dated this _____ day of _____, _____.

BY THE COURT:

Circuit Court Judge

ATTEST:

_____, Clerk of Courts

BY: _____

(SEAL)