

**INFORMATION FOR DIVORCING MEMBERS
AND SPOUSES OF THE
CITY OF BOCA RATON POLICE AND FIREFIGHTERS RETIREMENT SYSTEM**

To assist your attorneys in resolving pension issues involved in your divorce, please give this memorandum, prepared by the Retirement System's general counsel, to your divorce lawyers and mediator. This will assist them in resolving any pension issues which arise in the divorce proceedings and will save you lawyers' fees. This information should be given to the lawyers for both you and your spouse.

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MEMORANDUM

TO: Attorneys representing members and their spouses in dissolution proceedings and Mediators

FROM: Bob Sugarman

RE: City of Boca Raton Police & Firefighters Retirement System

This memorandum is to assist you in resolving pension issues in dissolution proceedings involving Retirement System members and their spouses. The question of whether the pension is a marital asset and the division of the pension we defer to you, as family law attorneys. This memo is to assist you in implementing any division of the pension which has been agreed upon or ordered.

1. Nature of the Pension Fund. The Retirement System is governed by a board of trustees which administers a defined benefit governmental pension plan providing retirement, disability and pre-retirement death benefits.

2. Governing Law. The Retirement System is established and set forth in Sections 12-126 to 12-156 of the Boca Raton Code (available on line at <http://www.municode.com>) and is also governed by Chapters 175 and 185, Chapter 112 (Part VII), Florida Statutes, and the Internal Revenue Code. As a governmental plan, the Retirement System is not covered by ERISA.

3. Appraisal of Pension Value. The Retirement System cannot provide you with a valuation of the present value of the member's pension.

An annual estimate of a Member's accrued benefit is provided to each member. You can obtain this from your client or your client's spouse. However, to obtain an exact calculation of the pension benefit which accrued during the marriage, you should engage your own independent actuary. The actuary (and not the parties or their lawyers) should contact the Retirement System's office which will provide the actuary with the plan provisions and the Retirement System's records of the member's earnings and credited service which are needed by the actuary for the calculation. A subpoena or request for documents is not needed. A call or request from the actuary will suffice. The actuary should contact:

City of Boca Raton Police & Firefighters Retirement System
2333 West Glades Road
Boca Raton, FL 33431
Telephone: (561) 544-8520

Alternately, you can engage the Retirement System's actuary, at your client's expense, to perform the calculation. You must inform the actuary of the method to use. The Systems' actuary is:

Bradley Heinrichs
Foster & Foster Actuaries
13420 Parker Commons Boulevard, Suite 104
Fort Myers, FL 33912
TEL: (239) 433-5500
FAX: (239) 481-0634

4. Division of Pension. Of course, the Retirement System prefers that the member provide the spouse with other assets to equal the value of the pension marital assets to ease the Retirement System's administrative burden. Should this not be possible and the benefits payable by the Retirement System be divided, the Retirement System requires that the precise dollar amount per month or percentage of benefit to be paid to the ex-spouse be specified.

5. QDROs not Honored. As a governmental plan, the Retirement System is not required to and will not honor QDROs.

This was recognized in Board of Trustees of the City General Employees Pension Plan, City of Jacksonville v. Vizcaino, 653 So.2d 1012 (Fla. 1st DCA 1994), in which the court held:

However, the QDRO exception to the prohibition against assignment or alienation of pension benefits is of no assistance to Anna because, as the parties correctly recognize, "governmental plans" (defined as including plans established or maintained by a political subdivision of a state) are expressly excluded from ERISA coverage. 29 U.S.C. Secs. 1003(b)(1) & 1002(32).

QDROs also violate the non-alienation provisions of the City code¹ and Chapters 175 and 185, Florida Statutes.²

The only exception to the non-alienation provisions is set forth in the Alvarez case, 580 So.2d 1st DCA (Fla. 1991), which makes the Retirement System subject to income deduction orders.

Although QDROs are not available, there are two methods by which you can effect a distribution of the spouse's pension share. The spouse's distribution must start at the same time that the member's pension payments begin and can continue only so long as the member's pension payments continue (which is for life for a retirement pension or until recovery or death for a disability pension).

6. Available Means of Distributing a Spouse's Share.

a. Payment by Member. The Court can order or the parties can agree that upon receiving her or his monthly pension payment, the member will remit the spouse's share to the ex-spouse. Since most Retirement System payments are made by direct deposit and many banks offer automatic electronic payment of 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. This is the method **preferred** by the Retirement System since it does not incur the cost of setting up separate payments to the ex-spouse.

b. Income Deduction Orders. Under the Alvarez case, 580 So.2d 1st DCA (Fla. 1991), the Pension Fund is required to honor IDOs. If you choose this method, which we do not prefer, the IDO must specify the amount to be paid each month to the ex-spouse, the duration of such payments, and the name and address of the ex-spouse.

Once issued, the IDO should be sent by certified mail, return receipt requested, to the Pension Office at the address shown in Section 3, above, together with a check for \$100.00 made payable to the City of Boca Raton Police & Firefighters' Retirement System to cover the cost of setting up the separate account, direct deposit or monthly check authorization and tax reporting. Once received by the Retirement System, the IDO will remain in effect until a pension is no longer payable to the member³ or a subsequent court order is received by the Retirement System.

¹ §12-139

² §§175.241 and 185.25

³ All retirement pensions are no longer payable to a member after the member dies. A disability pension is no longer payable after a member recovers from the disability. All Florida governmental pensions are no longer payable if the member is convicted of a specified criminal offense and the pension is forfeited pursuant to Article 11, Section 8(d), Florida Constitution and Section 112.3173, Florida Statutes.

7. Any Questions. This memo is meant to provide all the information the parties need to resolve the division and distribution of a pension. If you have any legal issues to discuss, please call Bob Sugarman, the Retirement System's general counsel. Ask for his assistant to schedule a conference call among Bob and both parties' attorneys or between Bob and the mediator. The conference call must be arranged by the parties who must pay any telephone charges. One conference call with Bob is available at no charge to the parties as it is included in the Retirement System's retainer with this law firm. Additional conferences must be prepaid at \$300 per hour with a \$300 minimum.