

**TITLE 162
LEGISLATIVE RULE
CONSOLIDATED PUBLIC RETIREMENT BOARD**

**SERIES 1
GENERAL PROVISIONS**

§162-1-1. General.

1.1. Scope. -- The scope of this rule involves the enabling legislation and general administrative criteria of the Consolidated Public Retirement Board.

1.2. Authority. -- W. Va. Code §5-10D-1.

1.3. Filing Date. -- ~~April 25, 2011.~~

1.4. Effective Date. -- ~~May 1, 2011.~~

§ 162-1-2. Definitions.

2.1. Definitions: For purposes of determining the divisibility of the annuity, refund of accumulated contributions, pre-retirement death benefit, or other payment available to a member, retirant or beneficiary of any Retirement System administered by the Board in cases of divorce or legal separation, the following definitions apply:

2.1.a. "Alternate payee" means the person designated in a Qualified Domestic Relations Order to receive all or a portion of the benefits available under one of the Retirement Systems.

2.1.b. "Domestic Relations Order" means an order, judgment, or decree which relates to the provision of marital property rights to a spouse or former spouse of a member or retirant, and which is made pursuant to a state domestic relations law.

2.1.c. "Exempt service" means all additional service credit due to non-contributory military service and accumulated sick and annual leave.

2.1.d. "Participant" means the spouse who is a member or retirant in one of the Retirement Systems administered by the Board and whose interest in a Retirement System is divided by a Qualified Domestic Relations Order in accordance with this rule.

2.1.e. "Qualified Domestic Relations Order" means a Domestic Relations Order that assigns to an alternate payee the right to receive all or a portion of the benefits payable to a person under any of the Retirement Systems administered by the Board, and which has been determined by the Board as meeting the requirements of this rule and any applicable statute. A "Qualified Domestic Relations Order" under this rule is not intended to, and shall not, mean the same as a "Qualified Domestic Relations Order" as defined in Internal Revenue Code (Code) Section 414(p), except to the extent that the provisions of Code Section 414(p) are applicable to governmental plans.

2.1.f. "Vested Accrued Retirement Benefit" means the benefit due to the member or retirant as

of the date specified by the parties in the Qualified Domestic Relations Order set out in subdivision 7.2.b. of this rule.

§162-1-2. §162-1-3. Consolidated Public Retirement Board.

~~2-1-3.1.~~ The Board shall determine all other rules that are necessary for its administration and the administration of the Teachers Defined Contribution Retirement System (W. Va. Code §18-7B-1, et seq.); the Teachers Defined Benefit Retirement System (W. Va. Code §18-7A-1, et seq.); the Public Employees Retirement System (W. Va. Code §5-10-1, et seq.); the Judges' Retirement System (W. Va. Code §51-9-1, et seq.); the Department of Public Safety, Death, Disability and Retirement Fund (W. Va. Code §15-2 -26, et seq.); the West Virginia State Police Retirement System (W. Va. Code §15-2A-1, et seq.); the West Virginia Deputy Sheriff Retirement System (W. Va. Code §7-14D-1, et seq.); the West Virginia Emergency Medical Services Retirement System (W. Va. Code §16-5V-1, et seq.); and the Municipal Police Officers and Firefighters Retirement System (W. Va. Code §8-22A, et seq.).

§162-1-3. §162-1-4. Amendments.

~~3-1.~~ 4.1. The Board may make, alter, amend, suspend and repeal the Rules of the Board by a vote of not less than a majority of a quorum of its members at any regular meeting of the Board provided at least ten (10) days notice of such purpose is given. A quorum of the Board may make, alter, amend, suspend or repeal the Rules of the Board at any emergency meeting of the Board, provided at least ten (10) days notice of the purpose to make, amend, alter, suspend or repeal the Rules in whole or part at the meeting is given, and of the substance of the proposed action is announced. However, any action to promulgate, amend, suspend or repeal the Rules of the Board are subject to the rule-making provisions of W. Va. Code §29A-3-1 et seq.

§162-1-4. §162-1-5. General Administrative.

~~4-1.~~ 5.1. Fiscal year. The fiscal year of the Board commences on the 1st day of July and ends on the 30th day of June the following year.

~~4-2.~~ 5.2. Books, records and minutes. The records of the Board are covered by the laws of the State of West Virginia and are subject to any applicable privilege and/or limitation under the Freedom of Information Act (W. Va. Code §29B-1-1). The Board shall keep all final actions of the Board in the form of minutes, and the minutes shall be open for inspection by the public at all reasonable times.

~~4-3.~~ 5.3. Contracts. All contracts and obligations of the Board shall be signed by the chairman or other officers or employees of the Board authorized to execute contracts or other obligations of the Board.

~~4-4.~~ 5.4. Indemnification. The Board shall, to the fullest extent allowed by law, indemnify and reimburse its present and future members, officers, employees or agents against loss for all expenses, including without limitation attorney fees, judgments, fines, taxes and penalties and interest thereon, for their official acts as Board members, officers, employees or agents. If the Board determines that a settlement of any action, suit or proceeding is in the best interest of the Board, all amounts paid in effecting the settlement, other than amounts paid by the Board itself, reasonably incurred by a member, officer, employee or agent in connection with or arising out of any action, suit or proceeding in which he or she may be involved by reason or his or her being or having been a member, officer, employee or agent of the Board shall be paid by the Board. Provided, that the indemnity shall not include any expenses incurred by any member, officer, employee or agent with respect to matters as to which he or she is finally adjudged in any action, suit or proceeding to have been guilty of or liable for gross negligence, willful misconduct or criminal acts in the performance of his or her duties of the Board. The right of indemnification provided in this subsection inures to the benefit

of the heirs, executors or administrators of each member, officer, employee or agent and is in addition to all other rights to which the member, officer, employee or agent may be entitled as a matter of law.

~~4-5:~~ 5.5. Insurance. To the extent possible, the Board shall obtain necessary liability insurance coverage from the West Virginia Board of Risk and Insurance Management to cover itself, its members, officers, employees and agents in the performance of their duties as trustees for the Retirement Systems set forth in this rule.

~~4-6:~~ 5.6. Conflict of interest. The Board shall maintain constant vigilance against conflicts of interest, or the mere appearance of conflicts of interest. No officers, member, agent or employee of the Board shall be financially interested, directly or indirectly, in any contract with the Board, or in the sale of any property, real or personal, to or from the Board. Provided, that this section shall not apply to contracts or purchases of property, either real or personal, commodities or services between the Board and any governmental agency.

~~§162-1-5:~~ §162-1-6. Administrative Expenses.

~~5-1:~~ 6.1. The Consolidated Public Retirement Board shall create an Expense Fund which shall be funded by an assessment against the Teachers Defined Benefit Retirement System, the Public Employees Retirement System, the Judges' Retirement System, the Public Safety Death, Disability and Retirement Fund, the West Virginia State Police Retirement System, the West Virginia Deputy Sheriff Retirement System, the West Virginia Emergency Medical Services Retirement System and the West Virginia Municipal Police Officers and Firefighters Retirement System, with payment out of earnings and the employers part of the Teachers Defined Contribution Plan in an amount determined by the Board, per year, for each member, retirant, beneficiary, and alternate payee receiving benefits. The Board shall deduct the fee from the vested employee account for terminated members and alternate payees of terminated members of the Teachers Defined Contribution Plan who are not vested in any employer contributions.

~~5-2:~~ 6.2. All administrative costs of the Board, including, but not limited to, salaries and employee benefits, shall be paid from the expense fund. However, any indemnification required pursuant to subsection 4.4 of this rule shall be paid from the particular Retirement System affected.

~~5-3:~~ 6.3. The administrative expense fund is not subject to satisfaction of any judgment or award against any of the Retirement Systems, and the judgment or award shall be satisfied from assets of the particular Retirement System against which it is levied.

~~§162-1-6:~~ §162-1-7. Non-Alienation of Benefits: Divorce and Separation.

~~6-1:~~ 7.1. The moneys in each of the Retirement Systems and the right of a person to receive any benefit, whether it be an annuity, return of retirement contributions, or other benefit, are not subject to execution, attachment, garnishment, the operation of bankruptcy or other insolvency laws, State or municipal taxation, or any other legal process whatsoever; and are not assignable nor transferable by any employee, retirant or beneficiary: Provided, That orders entered by a court of record and enforced by the Bureau for Child Support and Enforcement may be honored by the Board.

~~6-2:~~ 7.2. In cases of divorce or legal separation, the annuity, refund of accumulated contributions, pre-retirement death benefit, or other provisions payment available to a member, retirant or beneficiary of any Retirement System may be divisible by a Qualified Domestic Relations Order only as provided in this rule. The Board shall not honor as a Qualified Domestic Relations Order any Qualified Domestic Relations Order seeking to divide a pension benefit of a member, retirant or beneficiary which does not meet the requirements

of this rule.

~~6.2.a.~~ 7.2.a. In cases of divorce or legal separation where the member's or retirant's interest in his or her retirement account is subject to division as marital property pursuant to state domestic relation law, that portion of the member's or retirant's retirement account which constitutes marital property and which is subject to division by a Qualified Domestic Relations Order shall be determined by the Board by using the following formula, but only after the benefits are available to the member or retirant at death, refund, disability retirement or retirement: the marital property portion of a member's or retirant's retirement benefit which is subject to division shall be computed by the Board by multiplying the Vested Accrued Retirement Benefit, less all benefits due to Exempt Service, by a fraction, the numerator being the number of years of contributing service incurred during the marriage, and the denominator being the total number of years of contributing service towards the pension at the date of separation or the date of divorce. In determining the marital property portion of a member's or retirant's benefit, the numerator used by the Board in the fraction shall not include the member's previously withdrawn service credit which was not repaid in full as of the date used by the parties as provided for in subdivision ~~6.2.b.~~ 7.2.b. of this rule.

~~6.2.a.1.~~ "Vested Accrued Retirement Benefit" means the benefit due to the member as of the date specified by the parties in the Qualified Domestic Relations Order set out in subdivision ~~6.2.b.~~ of this rule.

~~6.2.a.2.~~ "Exempt Service" includes all additional service credit due to non-contributory military service and accumulated sick and/or annual leave.

~~6.2.b.~~ 7.2.b. In any Qualified Domestic Relations Order which meets the requirements of this rule and which seeks to divide a member's or retirant's state retirement benefit, the parties, by agreement, or the court having jurisdiction of the parties domestic relations proceeding, may utilize either the parties' date of separation or the date of the divorce as their numerator in the marital share formula required by sub-division ~~6.2.a.~~ 7.2.a. of this rule.

~~6.2.c.~~ 7.2.c. For the division of state pension benefits between a member or retirant and ~~his or her ex-spouse and an alternate payee~~ by a Qualified Domestic Relations Order which meets the requirements of this rule, the Board shall use a shared payment approach shall be utilized, with the ex-spouse alternate payee being paid an agreed upon or court ordered percentage of the marital property portion of the member's or retirant's Vested Accrued Retirement Benefit at the same time and in the same form as the benefit elected by and paid to the member once he or she enters pay status: Provided, That for the Teachers' Defined Contribution Plan, the Board shall use a separate payment approach, with the interest awarded to the alternate payee being divided upon acceptance of the Qualified Domestic Relations Order, and being placed into an individual account in the name of the alternate payee for further investment in accordance with the alternate payee's direction, and for payment at the time or times that are permissible under the plan and applicable federal or state law.

~~6.2.d.~~ 7.2.d. Unless otherwise specifically agreed to by the parties in their Qualified Domestic Relations Order or ordered by the Court having jurisdiction of the parties' domestic relation proceeding, the tax basis and any post-retirement cost of living increases shall be applied to the benefit of both the member or retirant and the alternate payee proportionate to the division of the Vested Accrued Retirement Benefit.

~~6.2.e.~~ 7.2.e. Qualified Domestic Relations Orders shall contain all of the following in order to meet the requirements of this rule:

~~6.2.e.1.~~ 7.2.e.1. The name and last known address of the participant and ~~his or her ex-spouse.~~

The ex-spouse shall be designated as the "alternate payee" within the order the alternate payee;

~~6.2.e.2.~~ 7.2.e.2. The name of the state retirement plan to which the Qualified Domestic Relations Order applies; and

~~6.2.e.3.~~ 7.2.e.3. The percentage of the marital property portion of the member's or retirant's Vested Accrued Retirement Benefit which is to be paid to the alternate payee.

~~6.2.f.~~ 7.2.f. For a Qualified Domestic Relations Order to be acceptable and honored by the Board, the order may not require the member's retirement plan to provide the alternate payee with any type or form of benefit, or any option, not otherwise provided under the plan; may not require the plan to provide for increased benefits determined on the basis of actuarial value; may not require the plan to pay benefits to an alternate payee which are required to be paid to another alternate payee under a prior Qualified Domestic Relations Order; ~~and may not require the plan to pay benefits to an alternate payee in the form of a qualified joint and survivor annuity for the lives of the alternate payee and his or her subsequent spouse; and may not require the plan to pay the alternate payee more than 100% of the marital property portion of the member's benefits, as defined and calculated in accordance with subdivision 7.2.a. of this rule, except as permitted by the rules as set forth in subdivision 7.2.g. of this rule.~~

7.2.g. The following additional restrictions apply:

7.2.g.1. Public Employees Retirement System and Deputy Sheriff Retirement System: A Qualified Domestic Relations Order may not require the member or retirant to elect any particular form of pre or post retirement benefit available under the plan, may not prohibit the member or retirant from changing the form of benefit if one has already been elected and such a change is otherwise permitted by the plan, and may not require the alternate payee be treated as the surviving spouse of the member or retirant for purposes of any pre or post retirement benefit if such an option has been or is elected by the member or retirant. This rule shall not be construed to prohibit a member or retirant from entering into a voluntary agreement, or being subject to an order from a state court of competent jurisdiction, which requires the member or retirant to elect a particular form of benefit available to him or her under the plan, or which prohibits the member or retirant from changing the form of benefit already elected by him or her where such a change is otherwise permitted by the plan, or which requires the member or retirant to select the alternate payee as the surviving spouse of the member or retirant for purposes of any benefit elected by the member or retirant; however, such restriction cannot be contained within a Qualified Domestic Relations Order and cannot be enforced by the Board: Provided, That a Qualified Domestic Relations Order with respect to a retirant who has already retired as of the date of entry of the order may prohibit a retirant who elected a joint and survivor annuity option upon retirement from changing said joint and survivor annuity to a life annuity upon the retirant's divorce; and further provided that a Qualified Domestic Relations Order with respect to a retirant who has retired as of the date of entry of the order may also prohibit the retirant from naming a new spouse as an annuitant for any retirement benefit option available under the plan to a retirant who divorces and remarries after retiring.

7.2.g.2. Teachers' Retirement System: A Qualified Domestic Relations Order may not require the member or retirant to elect any particular form of pre or post retirement benefit available under the plan, may not prohibit the member or retirant from changing the form of benefit if one has already been elected and such a change is otherwise permitted by the plan, and may not require the alternate payee to be treated as the surviving spouse of the member or retirant for purposes of any pre or post retirement benefit, if such an option has been or is elected by the member or retirant. This rule shall not be construed to prohibit a member or retirant from entering into a voluntary agreement, or being subject to an order from a state court of competent jurisdiction, which requires the member or retirant to elect a particular form of benefit available to him or her under the plan, or which prohibits the member or retirant from changing the form of benefit

already elected by him or her where such a change is otherwise permitted by the plan, or which requires the member or retirant to select the alternate payee as the surviving spouse of the member or retirant for purposes of any pre or post retirement benefit available under the plan; however, such restrictions cannot be contained within a Qualified Domestic Relations Order itself or enforced by the Board: Provided, That a Qualified Domestic Relations Order with respect to a retirant who has retired as of the date of entry of the order may prohibit the retirant from naming a new spouse as an annuitant for any retirement benefit options available under the plan to a retirant who divorces and remarries after retiring.

7.2.g.3. West Virginia Municipal Police Officers and Firefighters Retirement System; West Virginia State Police Retirement System; and Emergency Medical Services Retirement System: A Qualified Domestic Relations Order may not require the member or retirant to elect any particular form of benefit available under the plan, may not prohibit the member or retirant from changing the form of benefit if one has already been elected by the member or retirant and such a change is otherwise permitted by the plan, and may not require the alternate payee to be treated as the surviving spouse of the member or retirant for purposes of any pre or post retirement benefit, if such an option is elected by the member or retirant. This rule shall not be construed to prohibit a member or retirant from entering into a voluntary agreement, or being subject to an order from a state court of competent jurisdiction, which requires the member or retirant to elect a particular form of benefit available to him or her under the plan, or which prohibits the member or retirant from changing the form of benefit already elected by him or her, or which requires the member or retirant to select the alternate payee as the surviving spouse of the member or retirant for purposes of any pre or post retirement benefit available under the plan; however, such restrictions cannot be contained within a Qualified Domestic Relations Order itself or enforced by the Board.

7.2.g.4. West Virginia State Police Death, Disability and Retirement Fund; and Retirement System for Judges of Courts of Record: A Qualified Domestic Relations Order may not require the alternate payee to be treated as the surviving spouse of the member or retirant for purposes of any pre or post retirement benefit available under the plan.

6.2.g. 7.2.h. In cases of divorce or legal separation in which the Court of record enters a division order in accordance with the formula and the requirements of this rule, the Board shall make separate payments to the member or retirant and the former spouse in accordance with that order. Payments to the former spouse shall be prospective only and shall commence upon pay status to the member or retirant and following the Board's receipt and acceptance of the entered Qualified Domestic Relations Order.

6.2.h. 7.2.i. In cases of divorce or legal separation, the Qualified Domestic Relations Order shall contain a prohibition against the member obtaining a loan under W. Va. Code §18-7A-34 or W. Va. Code §7-14D-23. Provided, That, a member may borrow from that portion of his or her individual account not subject to the Qualified Domestic Relations Order.

7.2.j. Procedure: Within 30 days of receipt of a Domestic Relations Order, the Board's staff shall notify, in writing, the parties identified in the Domestic Relations Order as the member or retirant and alternate payee, or their counsel if represented, of the receipt of the Domestic Relations Order. At this time, Board staff shall also notify said parties or counsel whether the Domestic Relations Order has been determined to meet the requirements for a Qualified Domestic Relations Order, or whether Board staff requires additional time or additional information to complete such a determination. If Board staff determines the Domestic Relations Order fails to meet the requirements for a Qualified Domestic Relations Order, said parties shall be notified in writing by mail, and such notification shall contain an explanation for the denial. In the event the Board determines the Domestic Relations Order is not a Qualified Domestic Relations Order, it shall be the duty of the member or retirant and alternate payee to cooperate and do all things reasonably necessary to devise and submit to the Board an order which is acceptable to the Board and which is consistent with this

rule and applicable law. One or both parties may appeal a determination by Board staff that a Domestic Relations Order fails to meet the requirements for a Qualified Domestic Relations Order pursuant to the Board's Benefit Determination and Appeal Rules.

§162-1-7: §162-1-8. Death Benefits.

7-1. 8.1. The several Retirement Systems to be administered by the Board have varying and different definitions of who a survivor beneficiary may be if the member dies prior to retirement and following retirement. The Board has adopted the procedures in this section for payment of death benefits for all systems.

7-1.a. 8.1.a. The "beneficiary" means the person who the member has designated as beneficiary in writing as of the date of his or her death. To the extent that plan provisions require the existence of an insurable interest between the named beneficiary and the member, the Board shall have the discretion to decide whether such interest exists.

7-1.b. 8.1.b. If, upon the death of a member or retirant, a dispute arises between two (2) or more people who claim beneficiary or survivor benefits, the Board may make payment to the duly registered legal representative of the estate of the deceased member or retirant. Payment may only be made upon submission of written proof of the representative of the estate, generally incorporated in a probate court order. The Board shall accept the Last Will and Testament of the deceased member or retirant for the purposes of payment to the estate under this subdivision.

7-1.c. 8.1.c. If the last designated beneficiaries of a member or retirant are children under the age of majority, but who reached their majority by the time of death, the Board shall always make payment pursuant to a court order or agreement entered into by the children of the member or retirant. If the designated beneficiaries are children who have not reached their majority, the Board shall only make payment to the court appointed guardian ad litem as specified in appropriate legal proceedings.

7-1.d. 8.1.d. Except under joint and survivor options, a member or retirant may retain the right of selecting his or her designated beneficiary at any time.

§162-1-8: §162-1-9. Miscellaneous.

8-1. 9.1. The members of the Board and any employee or agent of the Board are subject to the Governor's Travel Rules and Regulations.

8-2. 9.2. If a member of a Defined Benefit System is covered by a group insurance or prepayment plan participated in by a participating public employer, and if the member is permitted to, and elects to, continue coverage as a retirant, he or she may authorize the Board to have deducted from his or her annuity the payments required of him or her to continue coverage under group insurance or prepayment plan.

8-3. 9.3. A participating public employer in any Retirement System has the right of setoff for any proven claim arising from embezzlement by, or fraud of, a member, retirant or beneficiary.