

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

_____ COUNTY

____-CVD-____

_____,
Plaintiff,)

v.)

_____,
Defendant.)

**QUALIFIED DOMESTIC
RELATIONS ORDER –
401(k)**

THIS CAUSE coming on to be heard, and being heard, before the undersigned Judge of District Court for _____ County, North Carolina, and the Court, with the consent of the parties, makes the following:

FINDINGS OF FACT

1. Plaintiff/Participant (hereinafter "Plaintiff") is [NAME]. His/Her address is [ADDRESS]. His/Her social security number is ____-__-____. His/Her date of birth is [DATE].
2. Defendant/Alternate Payee (hereinafter "Defendant") is [NAME]. His/Her address is [ADDRESS]. His/Her social security number is ____-__-____. His/Her date of birth is [DATE].
3. The parties were married on [DATE], separated on [DATE], and were divorced on [DATE].
4. Defendant is employed by [COMPANY NAME], [COMPANY ADDRESS] and is a participant in the _____ Retirement Plan (hereinafter "Plan"). The Plan Administrator (hereinafter "Administrator") is _____, and the address of the Plan is [ADDRESS].
5. Defendant is fully vested in the benefits accrued by him/her under the Plan as of the date of this instrument.

6. Under the terms of the Plan, amounts attributable to the contribution of the employer are payable to a participant (or his/her beneficiary) only upon retirement, death or permanent disability.
7. The assets standing to the credit of Defendant participant employee's account as of the date of separation is marital property within the meaning of N.C.G.S. § 50-20, *et seq.*
8. Plaintiff is entitled to a distributive award in the form of a Qualified Domestic Relations Order awarding her one-half of the specific assets existing in the Plan to which Plaintiff was entitled as of the date of separation and any growth or loss thereon.

Therefore, based upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter and the parties and has the authority to enter the Order as hereinafter set forth.
2. Plaintiff is entitled to a Qualified Domestic Relations Order distributing to him/her one-half of the assets contained in Defendant's share of the Plan at date of separation, [DATE].

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant shall receive, as a distributive award, a share of the retirement benefits accrued by Plaintiff in the _____ Retirement Plan ("Plan") sponsored by _____, which share is defined hereinafter.
2. The retirement benefits accrued by Plaintiff in the Plan are determined to be marital property within the meaning of N.C.G.S. § 50-20, *et seq.*, to the extent that such benefits were accrued from [DATE], the date of the parties' marriage through the date of the parties' separation, [DATE], and any growth or loss thereon. A portion of the benefits accrued from the date of the marriage to the date of separation (the "marital portion") is available for distribution to Plaintiff. That portion shall be determined using the following fraction and formula _____ the numerator is _____ (no. of months Defendant earned benefits during his/her marriage to Plaintiff to the date of the parties' separation), the denominator is the total number of months Defendant earned benefits. Defendant's share is determined by multiplying this fraction by 50 percent.

3. Plaintiff shall be entitled to receive 50 percent of Defendant's vested retirement benefit accrued under the Plan as of [DATE OF SEPARATION]. Defendant shall be entitled to a lifetime monthly benefit, equal in actuarial value to 50 percent of the lifetime monthly benefit otherwise payable to Defendant on the basis of his/her accrued benefit as of [DATE OF SEPARATION], commencing when s/he attains age 65. The Plan Administrator shall account separately for the benefit to which Plaintiff is entitled. Plaintiff shall be treated as a beneficiary for all purposes under the Plan.
4. Defendant shall be entitled to elect at what time benefit payments shall commence, subject to the requirement of filing a written application as may be required by the Plan. In no event shall the benefit payments commence prior to the date on which Defendant attains age 55. Benefits to the Defendant shall be payable in the form of a monthly annuity for his/her life.
5. If Defendant elects to commence benefit payments prior to his/her attainment of age 65, the monthly benefit shall be calculated by actuarially reducing his/her benefit according to the terms of the Plan.
6. If Plaintiff dies before Defendant, the entire amount of Defendant's marital portion of Plaintiff's benefits in the Plan as defined herein shall be paid to Defendant and no amount due Defendant under this Order shall be altered by Plaintiff's death. Any present or future spouse of Plaintiff shall not be entitled to receive survivor benefits with respect to Defendant's interest in the Plan.
7. If Defendant dies before Plaintiff, the remaining amount of Defendant's marital portion of Plaintiff's benefits in the Plan shall be forfeited.
8. Defendant shall have the duty to notify the Plan Administrator in writing of any change in his/her mailing address.
9. Amounts awarded to Defendant under the terms of this Order shall be payable directly by the Plan to Defendant.
10. The terms and provisions of this Order are not to be construed to:
 - a. Require the Plan to provide any type or form of benefits, or any option, nor otherwise provided for under the Plan;
 - b. Require the Plan to provide increased benefits (determined on the basis of actuarial value);

- c. Require the payment of benefits to Plaintiff which are required to be paid to another Alternate Payee under another Order previously determined to be a Qualified Domestic Relations Order.

- 11. This instrument meets the definition of a Qualified Domestic Relations order under § 206(d)(3)(C) and (D) of the Employee Retirement Income Security Act of 1974, as amended, and § 414(p)(2) and (3) of the Internal Revenue Code of 1986, as amended.

- 12. This Order shall be binding upon the Plan Administrator of the Plan, the Retirement Plan Committee, the Trustees of any Trust associated with the Plan, and any and all other persons or entities which may be charged with the management of the Plan from time to time with respect to benefits to be distributed to Plaintiff and Defendant pursuant to the Plan.

- 13. Jurisdiction over the parties and the subject matter of this action is expressly reserved for the purpose of amending this instrument to cause it to meet the definition of a Qualified Domestic Relations Order in the event this instrument is determined by any Plan Administrator or any Court by competent jurisdiction not to meet that definition.

THIS the _____ day of _____, 20____.

Judge Presiding