

# Emerging Issues **2024** **FORUM**

## **04. Administrator Roundtable**

Moderator: **Philip Y. Brown, Esq.**,  
Principal/Founder | Brown Counsel

**Eric Cohen**, Executive Director | New Bedford Retirement System

**Dennis Gallagher**, Executive Director | Braintree Retirement System

**Rachel Grimaldi**, Executive Director | Worcester Regional Retirement System

**Erika Glaster**, Executive Director | Teachers' Retirement System

**DoubleTree by Hilton**  
Westborough, MA

**September 18, 2024**



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Principal/Founder, Brown Counsel  
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## 04. ADMINISTRATOR ROUNDTABLE

**Moderator:** Philip Y. Brown, Esq., Principal/Founder | Brown Counsel

**Speakers:**

**Eric Cohen**, Executive Director | New Bedford Retirement System

**Dennis Gallagher**, Executive Director | Braintree Retirement System

**Rachel Grimaldi**, Executive Director | Worcester Regional Retirement System

**Erika Glaster**, Executive Director | Teachers' Retirement System

## The 5th Member Appointment

Navigating the Landscape (or at least attempting to do so)



**Speaker:**

**Eric Cohen**, Executive Director | New Bedford Retirement System

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## Retirement Board Elections - Choosing the 5th Member

### “Where to – How to – When to”

- MACRS 2017 Fall Conference – presentation (John W. Parsons, Esq.)  
<https://www.mass.gov/doc/process-for-board-selection-of-5th-member/download>
- MACRS 2018 Spring Conference – presentation (Kenneth Hill, Esq.)  
<https://www.mass.gov/doc/retirement-board-elections-and-choosing-the-5th-member/download>
- 840 CMR 7.00 – Board Elections

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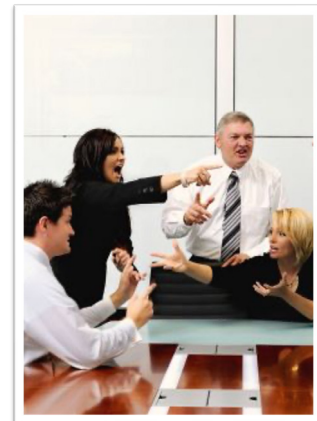
### NOTES:

## 5th Member Appointee Summary:

- Three (3) year term;
- In a City/Town, cannot be an employee, retiree, or official of any Member Unit;
- Appointed by majority vote of the other four (4) members (at least 3 must approve) → that said, all Four (4) must vote!
- S.20 (4 7/8E) – unless a member of the Board prior to 4/2/12, 5th member may not be an employee, contractor, vendor or person receiving payment (other than a retirement benefit) from a retirement board.

## What If 3 Can't Agree — MGL c. 32 s. 20(4)(b)

- MGL c. 32 s. 20 (4)(b) – Defines makeup of Board
  - States in part, “ If the fifth member is not chosen by the other four members within thirty days after the expiration of the term of the fifth member, said member shall be appointed in a city by the mayor, subject to confirmation by the city council, or in a town by the board of selectmen.”



## NOTES:

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## In The Alternative: Local Option s. 20(4)(c)

- Must be adopted by council at the recommendation of the Mayor or, depending on local charter, board of selectmen with approval of the town at town meeting;
- Allows each of the four (4) members to submit three (3) names to PERAC for consideration to be appointed 5th member – PERAC appoints!;
- Currently only adopted by a handful of retirement systems;
- **Highly unlikely to be voluntarily adopted** → Cities/towns are **NOT** in the business of voluntarily limiting their reach/authority – Local Option s.20(4)(c) does just that by authorizing an outside entity (PERAC) to select the 5th member of the Board for a three (3) year term.

## A Fiduciary's Duty of Impartiality

### You Can't Have One Without The Other

- Conflicting Interests...aren't we all fiduciaries?
  - Member Unit v. Retirement System
- The Importance of **True Impartiality**

## NOTES:

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## Recommendations Moving Forward

- Legislatively and uniformly apply a process such as 20(4)(c) or similar;
- Require PERAC or other unaffiliated party to intervene when a Board majority fails to agree, in order to ensure compliance with the intent of C. 32;
- Amend the current rule so to assure an arms length approach and protect the legislative intent and fiduciary integrity of the ever-so-important 5th member appointment.

## 5th Member Appointment —Takeaways

- Regardless of your seat at the table, fiduciary obligations are paramount – emphasize this to the Board.
- Emphasize an open process (encourage applicants apply and Board grant interviews to those interested in the position). The more individuals who apply for the position, the harder it is to justify a stalemate 2-2 vote.

### NOTES:

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# QUESTIONS??



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## NOTES:

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## HOME RULE PETITIONS SPECIAL LEGISLATION

Disability Actions

Speaker:

**Dennis Gallagher**, Executive Director | Braintree Retirement System

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## How the Process Begins

1. Significant Incident involving a member
2. Brought forward by Town/Department Head
3. Presented to local legislative body – **Approval**
4. Legislative sponsorship
5. Bill filed in Massachusetts Legislature
6. Goes through proper legislative process
7. Requires enactment by the Governor

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### NOTES:

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## Retirement Board Role

1. Follow through the legislative process for updates
2. Review language – refer to board attorney if necessary
3. Possible actuarial study for financial impact
4. Implement as enacted

## What is the Language?

- Retires a member similar to Section 100
- Bypasses disability process
- Return of annuity funds – is subject to federal tax
- Annual pension equal to regular compensation that would have been payable had the member continued in service at the time of their retirement until death or reaching the age of 65.

## NOTES:

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## What is the Language? *(Continued)*

- Sections 8, 91 and 91A do not apply
- Continuation of pay increases as if still working
- Upon reaching age 65 benefit is 80% of last 12 months
- Provides 75% to surviving named beneficiary

## Submitting in PROSPER

- Retirement type – Accidental Disability
- Disability Checklist
- Annuity Savings Fund – Showing 0 balance
- Short Calculation worksheet
- Payroll records – One year

## NOTES:

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## Submitting in PROSPER *(Continued)*

- Other Documents:
  - Letters of support
  - Notice of injury/incident
  - Copy of enacted legislation

# QUESTIONS??



## NOTES:

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Emerging Issues  
**FORUM**

2024



# DECONSTRUCTING DOMESTIC RELATION ORDERS (DROs)

**Speaker:**  
Rachel Grimaldi, Executive Director | Worcester Regional Retirement System

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## Deconstructing Domestic Relations Orders



NOTES:

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## Purpose

- Legally binding agreement that entitles the Alternate Payee (ex-spouse) to a portion of the Participant's (member) benefit.
- DRO's determine the amount the ex-spouse will receive when any of the following occur:
  - ▶ Regular Superannuation Retirement
  - ▶ Accidental or Ordinary Disability Retirement
  - ▶ Refund of deductions
  - ▶ Death In-Service



## Role of Retirement Boards

- If requested, review draft DRO to ensure the calculations can be completed as written pursuant to G.L., C. 32.
- An impartial third party – sole role is administering the benefit according to the DRO.
- Boards do not provide legal advice or assist in writing the DRO.

### NOTES:

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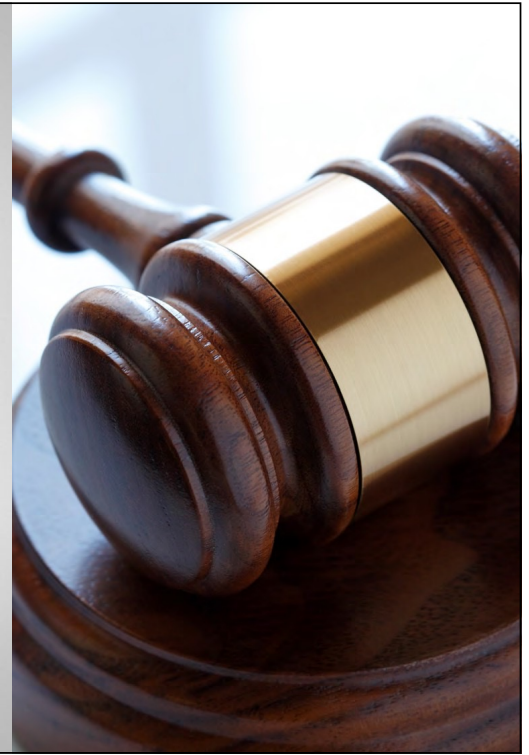
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## Requirements

- ▶ The Board needs a copy of the final version of the DRO signed by a judge.
- ▶ Without the Judge's signature, benefits cannot be determined.
- ▶ If applicable, the member must choose the option pursuant to the DRO.
- ▶ If the member is required to choose Option C and name the alternate payee as their beneficiary, the Board will need a copy of their birth record.



## COLA Increases

- The DRO may include a clause indicating whether the ex-spouse is entitled to a portion of the member's future COLA increases.
- If the DRO is silent on the COLA, the ex-spouse is not entitled to receive a portion of it.
- Unless the DRO reads differently, the percent of the COLA to the ex-spouse is determined by dividing their benefit/total benefit.



### NOTES:

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# DRO = Word Problem

The calculation parameters are usually written in paragraph 5 (regular retirement) or 6 (disability retirement):

- Retirement Date
- Creditable service
- Age
- Group (applies if member not in Gr. 1)
- Salary average
- Percent of benefit to the ex-spouse
- Option



## Marital Fractions

- All marital fractions do is reduce the ex-spouse's calculation by an additional percent.
- The numerator of the fraction usually represents the dates of the marriage from month/date/year – month/date/year.
- The denominator of the fraction is usually defined as the member's total creditable service as of their date of retirement.

### NOTES:

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# Example

- A group 1 member retires on 6/30/2024, under Option A, at age 60, with 30 years and 5 months of creditable service.
- The ex-spouse is entitled to 50% of the DRO calculation multiplied by a fraction. The numerator of service from 1/1/2000-12/31/2012. The denominator is the member's total creditable service at the time of retirement.
  - $1/1/2000 - 12/31/2012 : 13 \text{ years}$
  - $13.00/30.4167 = 42.7397\%$
- DRO Formula & Calculation:
  - Retirement Date: Actual Retirement Date – 6/30/2024
  - Age: Age at the time of retirement
  - Option: Any
  - Salary Average: Highest salary average 12/31/2012 = \$65,666.67
  - Creditable Service: Total at retirement = 30.4167 years
  - $0.020(\text{age factor}) \times 30.4167 = 60.8334\%$  (Total)
  - $\$65,666.67 \times 60.8334\% = \$39,947.28$  (Annual), \$3,328.94 (Monthly)
  - $\$3,328.94 \times 50\% \times 42.7397\% = \textbf{\$711.39 (Ex-spouse monthly benefit)}$

## Cost Allocation

- If/then scenarios
- Maybe included in the DRO regardless of whether member is required to designate their ex-spouse as a beneficiary.
- Usually applies under Options B & C



## NOTES:

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## Cost Allocation

### Member May Select Any Option & Beneficiary

- DRO does not specify any benefit option, and the member may designate beneficiaries of their choosing, pursuant to C. 32, including their ex-spouse, as their beneficiary.
- DRO reads, “If at the time of his retirement the Participant elects to receive his retirement benefit under Option C (or Option B) of the Retirement Plan, and also at the time of his retirement names anyone other than the Alternate Payee as the sole Option C (or Option B) survivor beneficiary, the benefit assigned to the Participant shall be reduced to reflect the entire cost of selecting Option C (or Option B) rather than Option A. The “cost” of Option C (or Option B) shall be defined as the difference between the monthly benefit under the elected option and what the monthly benefit would have been under Option A.”

## What Does This Mean?

Assuming the member selects Option C and does not designate their spouse as the beneficiary, the ex-spouse receives their benefit under Option A of the DRO calculation, which reduces the member’s benefit by the cost of Option C.

### 1. Cost of Option C

\$3,100.00 (ex-spouse monthly Option A)

- \$2,500.00 (ex-spouse monthly Option C)

\$600.00 (cost of Option C)

### 2. Cost of Option C + Ex-Spouse Benefit

\$2,500.00 (ex-spouse monthly Option C)

+ \$600.00 (cost of Option C)

**\$3,100 (ex-spouse receives Option A)**



## NOTES:



## Cost Allocation Ex-Spouse is the Beneficiary

The member is required to choose Option B or Option C and name the alternate payee as their beneficiary.

If required to choose Option B, the ex-spouse may only be entitled to a portion of the member's account balance, if applicable upon their death.

The cost may be deducted entirely from the ex-spouse's portion of the benefit or prorated between both parties. The proration may be defined in the DRO, or by a percent determined by dividing the ex-spouse's benefit/total benefit.

## DRO Language

"If at the time of his retirement the Participant elects to receive his retirement benefit under Option C (or Option B) of the Retirement Plan, and also, at the time of his retirement, names the Alternate Payee the sole Option C (or Option B) survivor beneficiary, the benefit assigned to the Alternate Payee shall be reduced to reflect the entire cost of selecting Option C (or Option B) rather than Option A. The "cost" of Option C (or Option B) shall be defined as the difference between the monthly benefit under the elected option and what the monthly benefit would have been under Option A."

### NOTES:

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## Example

- A member retires and their DRO requires them to select Option C and name their ex-spouse as the beneficiary.
- The member's monthly Option A benefit would have been \$6,658.88, but it is reduced to \$6,370.00.
- The ex-spouse's benefit is \$2,900.00 under Option C. Since the member was required to name them as the beneficiary, the DRO indicates that they are responsible for the entire cost of Option C.
- The ex-spouse is entitled to a "pro-rata" share of any future COLA's.

## Calculating Monthly Amounts

1.)  $\$6,658.88$  (Member A) -  $\$6,370.00$  (Member C) =  $\$288.88$  (cost)

2.)  $\$2,900$  (Ex-spouse C) -  $\$288.00$  (cost) =  $\$2,612.00$  (Ex-spouse amount)

3.)  $\$6,370.00$  (Total) -  $\$2,612.00$  (Ex-Spouse) =  $\$3,758.00$  (Member)

4.)  $\$2,612.00 / \$6,370.00 = 41\%$  (Ex-spouse)

5.)  $\$3,758.00 / \$6,370.00 = 59\%$  (Member)

6.) Member receives a monthly COLA of  $\$40.00$

$\$40.00 \times 41\% = \$16.40$  (Ex-Spouse)

$\$40.00 \times 59\% = \$23.60$  (Member)

## NOTES:



## Constructive Receipt

- A clause in the DRO holding the Plan Administrator (the Board) harmless if amounts paid to either the member or their ex-spouse are later found to be erroneous.
- Provides direction for the underpaid party to recoup monies.
- Not required, but always nice to have.

## Post-Retirement DRO's

The Option is already determined and cannot be changed post retirement.

Usually, the ex-spouse is simply entitled to a flat percentage of the member's benefit that is already in pay status.

May only be applied prospectively. Ex-spouse does not receive any retroactive compensation.

### NOTES:

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# Disagreements

- The member believes their ex-spouse is receiving too much.
- The ex-spouse believes that they are not receiving enough.
- Review the calculation with the parties.
- Upon request, provide a breakdown to both parties explaining how the calculation was performed.
- The breakdown may include language explaining the Board's role in the DRO process and indicating that both parties will have to return to court, and either negotiate a new DRO or have the DRO vacated.
- Boards require a signed copy of either document before any recalculations are prospectively implemented.



## Still Not Happy....

- Discuss the Board's role in the DRO process.
- If prompted, repeat that the Board cannot legally administer benefits in any other manner without a revised or vacated DRO signed by a Judge.
- Consult with your attorney.



## NOTES:

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# QUESTIONS??



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