

TITLE 2 PUBLIC FINANCE
CHAPTER 84 MAGISTRATE RETIREMENT
PART 600 INTERCEPTION OR DIVISION OF PAYMENTS

2.84.600.1 ISSUING AGENCY: Public Employees Retirement Association (PERA), P. O. Box 2123, Santa Fe, New Mexico 87504-2123.

[2.84.600.1 NMAC - Rp, 2.84.600.1 NMAC, 7/1/15]

2.84.600.2 SCOPE: This rule affects members, former members, retirees, beneficiaries, and the association under the Magistrate Retirement Act (MRA). This rule also affects the spouses and ex-spouses of members, former members and retirees under the act.

[2.84.600.2 NMAC - Rp, 2.84.600.2 NMAC, 7/1/15]

2.84.600.3 STATUTORY AUTHORITY: This rule is authorized by Sections 10-12C-3 and 10-12C-7 NMSA 1978, as amended.

[2.84.600.3 NMAC - Rp, 2.84.600.3 NMAC, 7/1/15]

2.84.600.4 DURATION: Permanent.

[2.84.600.4 NMAC - Rp, 2.84.600.4 NMAC, 7/1/15]

2.84.600.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section.

[2.84.600.5 NMAC - Rp, 2.84.600.5 NMAC, 7/1/15]

2.84.600.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for dividing the community interest in retirement pensions or contributions and for withholding from retirement pensions/contributions the amounts due pursuant to a child support enforcement order.

[2.84.600.6 NMAC - Rp, 2.84.600.6 NMAC, 7/1/15]

2.84.600.7 DEFINITIONS: [Reserved]

2.84.600.8 - 2.84.600.9 [Reserved]

2.84.600.10 DIVORCE DECREE OR ORDER:

A. The following information must be contained in a divorce decree or order which divides the community interest in MRA retirement pensions or contributions:

(1) specific information identifying the parties, i.e., full names, addresses, social security numbers, retirement numbers if any;

(2) a declaration that there is a community interest in a member's pension or member contributions;

(3) the percentage or dollar amount of each party's interest in the gross pension as calculated at the time of retirement;

(4) the percentage or dollar amount of each party's interest in member contributions;

(5) a direct order to PERA restraining refund of member contributions except according to the provisions of the decree or order, if such a restraint is desired;

(6) liability for and payment of federal and state income taxes;

(7) a direct order to PERA to issue separate warrants to each party.

B. A separate account may not be created for a member's former spouse who has a court-determined interest in a member's account.

C. A model order or decree containing provisions for the determination and division of the community interest in a MRA member's account shall be available on request from PERA's office of general counsel.

D. Payments made pursuant to such orders shall only be made when member contributions are refunded or a pension is payable in accordance with the provisions of the Magistrate Retirement Act. PERA shall not be obligated to administer pension benefits in accordance with such orders until the first of the month following written approval by the office of general counsel.

E. Member files must contain current names and addresses for persons having a court-determined interest in member retirement accounts. Any person with such an interest must provide PERA with a written statement of change of name or address. If a warrant is returned as undeliverable because of incorrect name or address, the money due the person will accumulate in the fund until PERA is furnished with the correct information. No interest shall be paid on any monies so accumulated.

F. Each party must submit a completed W-4 to PERA when applying for a retirement pension.

G. A court order requiring an election of a particular form of payment at retirement or the designation of one or more beneficiaries shall be addressed to the member, and the member shall be responsible for executing the proper PERA forms and providing the documentation necessary to effectuate the election or designation(s). A member who violates such an order may be in contempt of court.

[2.84.600.10 NMAC - Rp, 2.84.600.10 NMAC, 7/1/15]

2.84.600.11 - 2.84.600.19 [Reserved]

2.84.600.20 CHILD SUPPORT OBLIGATION ENFORCEMENT ORDER:

A. The following information must be contained in an order to withhold amounts due in satisfaction of current or delinquent child support obligations.

(1) specific information identifying the member or retired member, i.e., full name, address, social security number, retirement number, if any;

(2) specific information identifying the third party payee, i.e., full name, address, social security number, if any, or account code for child support enforcement bureau;

(3) dollar amount to be withheld from the monthly pension payment or a refund of member contributions;

(4) a direct order to PERA to issue separate warrants to each party.

B. A model order or decree containing provisions for the withholding of retirement pensions or contributions pursuant to a child support obligation enforcement order shall be available on request from PERA's office of general counsel.

C. Payments made pursuant to such orders shall only be made when member contributions are refunded or a pension is payable in accordance with the provisions of the Magistrate Retirement Act.

D. Member files must contain current names and addresses for persons having a court-determined interest in member retirement accounts. Any person with such an interest must provide PERA with a written statement of any change of name or address. If a warrant is returned as undeliverable because of incorrect name or address, the money due the person will accumulate in the fund until PERA is furnished with the correct information. No interest shall be paid on any monies so accumulated.

[2.84.600.20 NMAC - Rp, 2.84.600.20 NMAC, 7/1/15]

2.84.600.21 - 2.84.600.29 [Reserved]

2.84.600.30 FEDERAL PRE-EMPTIVE ORDERS: Pursuant to Section 10-12C-7 NMSA 1978, MRA retirement accounts are not subject to legal process under other state laws, except for division of a community interest in such accounts or in enforcement of child support obligations, both as provided in Section 10-12C-7 NMSA 1978. In the following instances, however, federal laws pre-empt the provisions of Section 10-12C-7 NMSA 1978.

A. IRS notices of levy for unpaid taxes will be honored if the account is in pay status, i.e., if the member has terminated employment and requested a refund of contributions, or if a pension is payable. If the levy is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions.

B. Orders issued by a U.S. bankruptcy court will be honored if the account is in pay status, i.e., if the member has terminated employment and requested a refund of contributions, or if a pension is payable. If the order is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions.

C. Orders of garnishment for fines or restitution by a federal court in a criminal case will be honored if the account is in pay status, i.e., if the member has terminated employment and requested a refund of contributions, or if a pension is payable. If the order is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions.

[2.84.600.30 NMAC - Rp, 2.84.600.30 NMAC, 7/1/15]

HISTORY of 2.84.600 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

MRA Rule 600, Interception or Division of Payments, filed on 7-1-92;

MRA Rule 600, Interception or Division of Payments, filed on 11-1-94;

MRA Rule 600, Interception or Division of Payments, filed on 12-1-95.

History of Repealed Material:

2.84.600 NMAC, Magistrate Retirement - Interception or Division of Payments, filed 12/14/2001, repealed 7/1/2015.