**Dissolution of Marriage Guidelines**

**Active / Deferred Member**

**Model A – Split Benefit**

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# Important Guidelines Applicable to a Dissolution of Marriage for an Active or Deferred Member Prior to Retirement

**CAUTION**: **You are hereby advised to seek competent legal counsel.**

The disposition of retirement benefits in domestic relations proceedings involves complex marital and tax issues.

The Sonoma County Employees’ Retirement Association (SCERA), its agents and consultants are not authorized to give legal or financial advice and, therefore, make no representation as to the sufficiency of the sample order under applicable federal or state law or as to legal or financial consequences.

This booklet provides general information about Domestic Relations Orders to be administered by SCERA, but it does not describe every detail. SCERA has tried to make this booklet as informative as possible on the subjects that are of most interest to the members. However, it is impossible to cover all issues and address all contingencies in a booklet of this type.

You should not rely solely on the information contained in this booklet. The disposition of your benefits will be determined according to your particular situation and the applicable provisions of the California Family Code and Government Code, state and federal case law, and SCERA’s Bylaws and policies. No statement in this guide is a legally binding interpretation, enlargement, or amendment of the provisions in the California Family Code or Government Code, case law or SCERA’s Bylaws and policies.

The California legislature periodically makes revisions and additions to retirement law. The SCERA Board periodically makes revisions and additions to the SCERA Bylaws and policies or provides interpretations of the law, Bylaws or policies. This booklet is updated to the date shown below. Plan terms are subject to change with or without notice. The most recent version of this booklet and additional information is available on the SCERA website: www.scretire.org.

The information presented in this guide should not be construed as legal or financial advice or as a legal opinion on specific facts. For legal advice regarding specific facts, consult an attorney knowledgeable in family law and retirement law matters. For financial advice, consult a qualified expert.

These Guidelines provide for the division of the community property interest of SCERA member benefits in accordance with the provisions of a court order setting forth the terms and conditions of the dissolution of a member’s marriage issued pursuant to the Family Code and applicable case law.

# A Joinder is Mandatory

SCERA must be joined as a party to the proceedings in order to comply with a Domestic Relations Order (DRO). Joinder forms can be found at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The Claimant (the individual being served) is “Sonoma County Employees’ Retirement Association”.

The Court is prohibited from imposing a DRO on SCERA to pay benefits with a total value that would exceed the value the member would have received if the DRO had not been issued. The Court is also prohibited from imposing a DRO on SCERA to provide a benefit that is different in form than that available to the member under the provisions of the County Employees Retirement Law of 1937 (CERL).

# Review of Draft DRO

SCERA must review the draft DRO before its submission to the Court to avoid delay of receipt of retirement benefits or additional costs to bring the DRO into compliance with the law.

# Employee Retirement Income Security Act (ERISA)

SCERA is not subject to ERISA, or any other provisions of law applicable to Qualified Domestic Relations Orders (QDROs).

# Subpoenas

SCERA will not honor any subpoena for information regarding a member, unless the subpoena is signed by a judge of a court of competent jurisdiction, pursuant to Government Code §31532. Additionally, SCERA cannot honor a subpoena signed by an attorney or a party in pro per.

# Retirement Option Election

At the time member retires, he/she may elect the Unmodified Option or Optional Settlement 1, 2, 3 or 4 pursuant to Government Code §§31760, 31761-31764. These options allow for various benefit amounts to be paid to the member and one or more beneficiaries.

The Unmodified Option allows for a continuation of 60% of the member’s retirement allowance to be paid to a qualified surviving spouse or surviving minor child. A Nonmember former spouse may be entitled to his or her community share of that continuation payment.

Options 1, 2, and 3, allow for a reduced payment to the member during his or her life and payments of various benefits to a single beneficiary who has an insurable interest in the life of the member after the member’s death. If the member designates someone other than the nonmember as beneficiary under Option 1, 2, or 3, the nonmember may receive his or her pro-rata share of any benefits paid to the named beneficiary.

Option 4 allows for payments to multiple beneficiaries, such as the former spouse and a surviving spouse. Under Option 4, the member can customize the percentage of the member’s monthly allowance the eligible survivor(s) will receive upon the member’s death. SCERA will consult its actuary to determine the “cost” of providing benefits to the Option 4 beneficiaries. The cost is assessed in the form of a reduction in the benefits paid to the member and/or beneficiary.

**With limited exceptions, option elections are irrevocable after the member receives his or her first retirement allowance payment.**

# Releases

Pursuant to §31532 of the CERL, the member must submit a signed, dated and witnessed ***Authorization to Release Information*** to his/her attorney and/or nonmember spouse’s attorney or any other necessary party (e.g., economist/actuary, etc.). These forms are available on the SCERA website: [www.scretire.org](http://www.scretire.org).

# Guidelines are not Mandatory

Members and nonmembers are not mandated to use the proposed orders in these Guidelines. These Guidelines are intended to provide the parties with reasonable flexibility, while facilitating the drafting of DROs which can be uniformly implemented by the SCERA Administrator. However, SCERA cannot comply with an order that is not consistent with the law or cannot be administered by SCERA. Obtaining SCERA’s approval of a DRO prior to filing with the court will avoid costly and time-consuming actions to set aside a deficient DRO.

# Service Connected Disability Retirement and Taxes

Internal Revenue Code §104 may only allow the SCERA member granted a service connected disability retirement to claim the benefit as non-taxable.  A payment made to an ex-spouse under a DRO will be considered taxable income by SCERA and a 1099R will be issued.  The foregoing is not intended as legal or tax advice.  Consult a tax attorney for legal and tax advice and/or a tax professional for tax advice.

# Deferred Compensation

SCERA does not administer the Sonoma County’s 457 Deferred Compensation Plan or 401(k) plan. Contact the Sonoma County Deferred Compensation Office at (707) 565‑3221.

# Gillmore Rights

The California Supreme Court, in *In re Marriage of Gillmore* (1981), 29 Cal. 3d 418; 629 P.2d 1, has indicated that a nonmember can request an immediate distribution (in monthly payments) directly from the member of the nonmember’s share of the member’s retirement benefits.  The Court also noted if the nonmember chooses to receive the nonmember’s share of the retirement benefits immediately, the nonmember will forfeit the right to share in the increased value of those benefits in the future. SCERA can assist the parties with an estimate of the member’s retirement benefit would be on a certain date, but SCERA cannot pay the nonmember anything until the member actually retires (*In re Marriage of Jensen* (1991) 235 Cal.App.3d 1137). Upon exercise of the nonmember’s *Gillmore* rights, the parties are advised to amend the existing DRO in order to restate the formula for calculation of the nonmember’s share of the member’s SCERA retirement benefits.

# Other Information

Please refer to SCERA’s website at [www.scretire.org](file:///%5C%5Cwin.root.sonoma.gov%5Cretireroot%5CRETIRE-DATA%5CJackie%5CDRO%5Cwww.scretire.org). It describes SCERA’s benefit programs and includes instructions on how to estimate your SCERA retirement benefit.

We suggest that you contact SCERA for assistance early in the dissolution process. SCERA staff cannot provide you with legal advice. However, once you have reviewed the information provided in this booklet, SCERA staff will be happy to answer non-legal questions you may have about how a dissolution may impact your retirement benefit.

For additional information contact:

SCERA

433 Aviation Blvd., Suite 100

Santa Rosa, CA 95403

(707) 565‑8100

# Sample Domestic Relations Order

*(Please refer to the disclaimer language and information provided on pages 1-3 of this booklet.)*

[Name of Counsel]

[Address of Counsel]

[City, State]

[Phone Number]

ATTORNEY FOR [Petitioner/Respondent]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA

In Re the Marriage of Case No.\_\_\_\_\_\_\_\_\_\_\_

Petitioner: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **STIPULATED DOMESTIC RELATIONS**

 **ORDER RE: DIVISION** **OF SONOMA**

and **COUNTY EMPLOYEES’ RETIREMENT**

 **ASSOCIATION BENEFITS**

Respondent: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Petitioner, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and Respondent, \_\_\_\_\_\_\_\_\_\_\_\_\_\_, and the Sonoma County Employees’ Retirement Association (SCERA) (Claimant) hereby stipulate as follows:

**RECITALS**

1. Petitioner and Respondent were married to each other on \_\_\_\_\_\_\_\_\_\_\_\_. They separated on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and this Court entered a judgment of dissolution in the action on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

2. This Court has personal jurisdiction over both Petitioner and Respondent and jurisdiction over the subject matter of this Order and the dissolution of marriage action.

3. SCERA was properly joined as a party to the Petitioner and Respondent’s dissolution of marriage action pursuant to sections 2060 through 2065 of the Family Code.

# STIPULATION

This Order is acceptable under the County Employees Retirement Law of 1937 (CERL), which is set forth at §31450 et seq., of the Government Code. SCERA is a “governmental plan” as defined by 29 U.S.C. §1002(32), and is therefore statutorily exempt from the provisions of the Employee Retirement Income Security Act (ERISA) 29 U.S.C. §1001, et seq., as amended by the Retirement Equity Act of 1984 (REA) which govern Qualified Domestic Relations Orders. See 29 U.S.C. §1003(b)(1). Therefore, any order directed to it in the instant case should not be referred to as a “Qualified Domestic Relations Order,” nor should it require SCERA to comply with any provisions of ERISA or REA, or any other provisions of law applicable to Qualified Domestic Relations Orders generally.

The purpose of this Stipulation and Order is to define the Member and Nonmember’s interests in the Plan. The terms of this Stipulation and Order supersede the Judgment of Dissolution of Marriage and shall control the definition and payment of the parties interests in the SCERA Plan held by the Member.

1. This Order is entered pursuant to the California Family Code.

2. Community Interest: [Respondent or Petitioner] (Member) and [Respondent or Petitioner] (Nonmember) have acquired a community interest in Member’s monthly retirement benefits and death benefits attributable to the Member’s service in SCERA covered employment from the date of marriage to the date of separation.

3. Nonmember Retirement Notification: Member shall notify Nonmember at least sixty (60) days prior to making any elections or choices or taking any other actions which in any way would serve to amend, compromise, perfect, or alter Nonmember’s rights in and/or to the Plan benefits. For good cause shown on noticed motion, the Court may shorten the above time. Member is solely responsible for notifying Nonmember before making any election under the Plan. Failure of Member to give such notice shall not affect or modify SCERA’s obligations under the Plan.

4. Calculation of Nonmember’s Interest: The community interest in the benefits payable by SCERA and the Plan shall be awarded one-half to each party. The community interest will be that fraction, the numerator of which is the number of months of Member’s service between the date of marriage and the date of separation, and the denominator of which is the number of months of Member’s total service, multiplied by the amount of the Member’s benefit. If a disability retirement is granted, this calculation will still be used and applied only to the portion of the benefit that is service based. Anything above and beyond that amount is not community property and belongs solely to the Member unless the parties stipulate otherwise.

5. Purchases of Service Attributed to Marriage: When there are purchase or redeposit payments made during community property time, the numerator of the fraction described in Paragraph 4 will include the corresponding credited service to the extent attributable to the period between the date of marriage and the date of separation.

6. Commencement of Benefits to the Nonmember.

 a. *Service Retirement*: Payments to Nonmember shall be made at the same time that such benefits are actually paid to Member in accordance with *In re Marriage of Jensen (1991) 235 Cal.App.3d 1137*. SCERA will make direct payment of each party’s share of said retirement benefit, by separate check, warrant, or electronic fund transfer, to Member and Nonmember respectively.

 b. *Disability Retirement*: Payments to Nonmember shall be made no earlier than the date that the Member would have been eligible for a service retirement (XX/XX/XX). SCERA will calculate what the service retirement amount would have been had the Member deferred as of the date of Disability Retirement and retired on this day. The Nonmember’s community property portion will be calculated using the formula in Stipulation 4. SCERA will make direct payment of each party’s share of said retirement benefit, by separate check, warrant, or electronic fund transfer, to Member and Nonmember respectively.

7. Death of Nonmember: If Nonmember dies before Member, any retirement benefits which would have been paid by SCERA to Nonmember if Nonmember were still alive, will become a part of the Nonmember’s estate, pursuant to *Powers v. Powers* (1990) 218 Cal.App.3d 626. Nonmember may designate a beneficiary to receive such benefits. If there is no designated beneficiary, such benefits will be paid to the estate of the Nonmember. [It may also be specified that the Nonmember’s portion revert back to the Member upon the Nonmember’s death or that a specific beneficiary(ies) be named].

8. Death of Member before Retirement: The community interest in any survivor benefits or death benefits that may become payable under the CERL and the Plan shall be determined according to the formula set forth in paragraph 4.

9. Beneficiary Designation: Member and Nonmember shall be responsible for filing a Beneficiary Designation form with SCERA, if applicable.

**[POST-RETIREMENT DEATH: At the time of retirement the Member must elect either an “Unmodified” retirement allowance or one of the optional retirement settlements provided for in Government Code sections 31761-31764. That election will affect the amount of the monthly benefit the Member will receive during her/his lifetime and whether there will be any form of continuance payable following the death of the Member.**

**[Choose one section from 10 to 10[G] and renumber it as 10. Then remove the balance of the remaining sections as well as the information shown in boldface.]**

10. Death of Member After Retirement: At the time Member retires, he/she shall elect the Unmodified retirement allowance pursuant to Government Code §31760.1. If the Member leaves a “surviving spouse” or “minor child” who is eligible to receive a monthly continuance pursuant to the terms of the Plan, Nonmember shall be entitled to a pro-rata portion of such continuance, and the amount of that portion shall be calculated pursuant to the formula set forth in paragraph 4 above.

**ALTERNATIVES: OPTIONAL SETTLEMENT 2 [This option is subject to IRC §401(a)(9).]:**

10[A]. Death of Member After Retirement: At the time Member retires, he/she shall elect “Optional Settlement 2” pursuant to Government Code §31762, and shall nominate Nonmember as his/her sole beneficiary. Pursuant to this option, if Member predeceases Nonmember, Nonmember will receive, for the remainder of his/her lifetime, a continuance of the retirement benefit received by the Member. Under this optional settlement, the right of Nonmember to receive a continuance allowance, after the death of Member, exists only for the lifetime of the Nonmember, and after the death of Nonmember, no further payment will be made to the estate or beneficiary of Nonmember. If Nonmember dies before the Member retires, Member need not select an optional settlement and may make any election provided for by the Plan.

10[B]. Death of Member after Retirement: At the time Member retires, he/she shall elect “Optional Settlement 2” pursuant to Government Code §31762 and may designate a beneficiary of Member’s choosing. Nonmember shall be entitled to a pro-rata portion of the continuance paid pursuant to Member’s election, and the amount of that portion shall be calculated pursuant to the formula set forth in paragraph 4 above. If Nonmember dies before the Member retires, Member need not select an optional settlement and may make any election provided for by the Plan.

**ALTERNATIVES: OPTIONAL SETTLEMENT 3:**

10[C]. Death of Member After Retirement: At the time Member retires, he/she shall elect “Optional Settlement 3” pursuant to Government Code §31763 and shall nominate Nonmember as his/her sole beneficiary. Pursuant to this option, if Member predeceases Nonmember, Nonmember will receive, for the remainder of his/her lifetime, a continuance allowance equal to 50% of the total retirement benefit received by the Member. Under this optional settlement, the right of Nonmember to receive a continuance allowance, after the death of Member, exists only for the lifetime of the Nonmember, and after the death of Nonmember, no further payment will be made to the estate or beneficiary of Nonmember. If Nonmember dies before the Member retires, Member need not select an optional settlement and may make any election provided for by the Plan.

10[D]. Death of Member after Retirement: At the time Member retires, he/she shall elect “Optional Settlement 3” pursuant to Government Code §31763 and may designate a beneficiary of Member’s choosing. Nonmember shall be entitled to a pro-rata portion of the continuance paid pursuant to Member’s election, and the amount of that portion shall be calculated pursuant to the formula set forth in paragraph 4 above.

**ALTERNATIVES: OPTIONAL SETTLEMENT 4:**

10[E]. Death of Member After Retirement: At the time Member retires, he/she shall elect “Optional Settlement 4” pursuant to Government Code §31764. Member will name Nonmember as a beneficiary to receive a continuance equal to XX% upon Member’s death. Member may name other beneficiaries to receive additional continuance amounts, provided that the total of all continuances does not exceed 100% of the Member’s Unmodified benefit. The continuance is paid through an actuarially equivalent reduction in Member’s allowance.

10[F]. Death of Member After Retirement: At the time Member retires, he/she shall elect “Optional Settlement 4” pursuant to Government Code §31764. Member will name Nonmember as a beneficiary to receive a continuance based on the actuarial value of the percentage reduction of his Unmodified benefit calculated pursuant to the formula set forth in paragraph 4 above payable on Member’s death only. Member may name other beneficiaries to receive additional continuance amounts, provided that the total of all continuances does not exceed 100% of the Member’s Unmodified benefit.

10[G]. Death of Member After Retirement: At the time Member retires, he/she shall elect “Optional Settlement 4” pursuant to Government Code §31764. Member will name Nonmember as a beneficiary to receive a continuance adjusted, with payments during Member’s life, to provide for an unreduced continuance on Member’s death. The amount payable to the Nonmember shall be equal to one-half of the community interest in the unmodified benefit, reduced by the cost of the Optional Settlement 4 providing a continuance to Nonmember. Member may name other beneficiaries to receive additional continuance amounts, provided that the total of all continuances does not exceed 100% of the Member’s unmodified benefit. The cost of the continuance for any beneficiary other than Nonmember shall be taken from the Member’s remaining benefit.

11. Constructive Trustee: In the event SCERA inadvertently or otherwise pays to any party or party’s survivor (including a qualified surviving spouse) any benefits that are assigned to another person under this order, the party or survivor receiving such excess benefits shall be deemed a constructive trustee of these amounts. The constructive trustee shall be solely responsible for paying to the appropriate person the amount to which the person is entitled under the terms of this Order.

12. Withdrawal of Contributions: If Member withdraws his/her accumulated contributions, Nonmember shall be entitled to receive, at the time Member receives his/her accumulated contributions, Nonmember’s community property share of the accumulated contributions. Should Member seek a refund of contributions and earnings, Nonmember must consent to the withdrawal in writing.

13. Required Documents: Member and Nonmember shall sign all forms, letters and other documents as required to effect the distribution(s) described herein and the intent of this Order.

14. Cooperation of Parties: In the event that SCERA does not approve the form of this Order, then each party shall cooperate and do all things reasonably necessary to devise a form of Order acceptable to SCERA.

15. Limitations on Order: Nothing contained in this Order shall be construed to require SCERA:

(a) To provide to Nonmember any type or form of benefit or any option not otherwise available to Member under the Plan;

(b) To provide to Nonmember increased benefits (as determined based on actuarial value) not available to Member;

(c) To pay any benefits to Nonmember which are required to be paid to another Nonmember spouse under court order;

(d) To pay any type or form of benefits not allowed under SCERA Regulations, including those implementing IRC §401(a)(9);

(e) To provide payment to the Nonmember of benefits forfeited by the Member;

(f) To change the benefit election of Member once Member has retired.

16. Reservation of Jurisdiction: The Court reserves jurisdiction to enforce, revise, modify or amend this Order, provided, however, neither this Order nor any subsequent revision, modification, or amendment shall require SCERA to provide any form or amount of benefits not otherwise provided by SCERA.

17. Member’s Information: For purposes of making any benefit payments provided by the terms of this Order or providing any notice required by the terms of this Order, Member’s name, current mailing address, and telephone number are listed below (Social Security number and birth date must be submitted separately to SCERA):

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Telephone No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

18. Nonmember’s Information: For purposes of making any benefit payments provided by the terms of this Order or providing any notice required by the terms of this Order, Nonmember’s name, current mailing address, and telephone number are listed below (Social Security number and birth date must be submitted separately to SCERA):

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Telephone No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

19. Notice of Change of Address: It is the responsibility of Member and Nonmember to keep SCERA informed of current addresses. Notice of change of address or telephone number shall be made in writing to SCERA addressed as follows, or as the Administrator may specify in a written response to Member and Nonmember:

Sonoma County Employees’ Retirement Association

433 Aviation Blvd., Suite 100

Santa Rosa, CA 95403

20. Intent: Member, Nonmember, the SCERA Administrator, and the Court intend that this Order meet all requirements of a domestic relations order under the CERL and the Regulations of SCERA and other laws of the State of California, and the Court shall reserve jurisdiction to modify this Order and to resolve any disputes that may arise among the parties and the Administrator concerning benefit payments or any other aspect of this Order. If any portion of this Order is rendered invalid or otherwise unenforceable, the Court reserves jurisdiction to make an appropriate adjustment to effectuate the intent of the parties. Any future fees, taxes, and/or penalties will be assessed against the persons who then have an interest payable from SCERA.

21. Benefit Increases: Nonmember shall be entitled to receive, pro rata, any increases, including but not limited to cost-of-living increases, in any benefits payable to Member under the Plan which are attributable to the community portion of such benefit payments. Any increase must be split in accordance with the same ratio as noted in paragraph 4.

22. Tax Responsibility: Each party shall be individually responsible for any and all federal and/or state tax liability arising from or relating to payments made separately to them by SCERA and the Plan of retirement benefits pursuant to this Order. Member and Nonmember shall indemnify each other for any federal and/or state income tax liability arising out of distribution of SCERA and the Plan of benefits awarded to any received by the indemnifying party under this Order whether such benefits are received directly from the Plan or through the other party.

23. Fees**:** Attorney’s fees or costs will not be sought against Claimant or the Plan in accordance with Family Code §2030, and the parties agree that Claimant is a “governmental entity” for purposes of that section.

**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Name]

 Petitioner

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Name]

 Attorney for Petitioner

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Name]

 Respondent

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Name]

 Attorney for Respondent

**ORDER**

The parties having stipulated and good cause appearing.

IT IS SO ORDERED.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

JUDGE OF THE SUPERIOR COURT