



H.F. 2725
(Hansen)

S.F. 2467
(Metzen)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): PERA-P&F
Relevant Provisions of Law: Special law
General Nature of Proposal: Joint and survivor annuity for ex-spouse of deceased officer
Date of Summary: March 10, 2008

Specific Proposed Changes

- Revise annuity form to provide joint and survivor annuity to ex-spouse following the retirement and death of the retired police officer

Policy Issues Raised by the Proposed Legislation

1. Violates prohibition against annuity form revision.
2. Precedent concerns, leading to revision of annuity forms after commencement of benefit and/after death of retired member.
3. Whether a case can be made that PERA caused harm, providing justification for the proposed treatment.
4. Cost to PERA-P&F of over \$100,000.

Amendments

- H2725-1A Technical amendment.
- H2725-2A Revises the level of the joint and survivor annuity from 50 percent joint-and-survivor to a level to be determined.
- H2725-3A Requires an administrative hearing to determine whether a benefit would be paid.



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Ed Burek, Deputy Director **EB**
RE: H.F. 2725 (Hansen); S.F. 2467 (Metzen): PERA-P&F; Revising Annuity to Provide Joint-and-Survivor Coverage to a Divorced Spouse Following Death of Retiree
DATE: February 29, 2008

Summary of H.F. 2725 (Hansen); S.F. 2467 (Metzen)

H.F. 2725 (Hansen); S.F. 2467 (Metzen) would provide a Public Employees Police and Fire Retirement Plan (PERA-P&F) 50 percent joint-and-survivor annuity to the divorced spouse of a deceased South St. Paul police officer retiree, who died in 2006. Benefits are not payable retroactively. To be eligible for a benefit, the divorced surviving spouse must first repay the benefit differential between the single life annuity selected by the deceased retired police officer and a 50 percent joint-and-survivor annuity, with 8.5 percent interest.

Public Pension Problem of Cheryl Kinney

The attached materials indicate that Craig Kinney started working as a South St. Paul police officer in 1966, eventually becoming the police chief, and ended his police service in 1999 when he retired. As a South St. Paul police officer, he was covered by a local police relief association, the South St. Paul Police Relief Association. Mr. Kinney was married to Cheryl Kinney and the couple divorced in 1993.

The benefit provisions of local police and paid fire relief associations generally assumed a family model which seems outmoded today. The police officer or firefighter was presumed to be male and the wife was presumed to be financially dependent. Given those family assumptions, these plans provided automatic survivor coverage to the spouse of a deceased active, deferred, or retired member. However, to qualify for this coverage, these plans generally required that the spouse must be married to the member at the time of death and, if applicable, at the time of retirement. Craig and Cheryl Kinney divorced in 1993, while Mr. Kinney was an active plan member. The 1993 divorce ended Ms. Kinney's eligibility for any survivor benefit from the South St. Paul plan as the plan did not offer any form of joint-and-survivor annuity.

Some of the attached material describes at least portions of the 1993 divorce decree. In part, the divorce decree granted Ms. Kinney a portion of Mr. Kinney's retirement benefit when he retired. The court order required Mr. Kinney to send a portion of each monthly retirement benefit that he received to Ms. Kinney. For much, if not all, of his retirement, Mr. Kinney paid Ms. Kinney the dollar amount required by the divorce settlement assuming that he would retire under local plan benefits. This arrangement placed Ms. Kinney at risk. If Mr. Kinney died, the payments to Ms. Kinney would stop. If sufficient non-pension marital property existed, the courts should have provided Ms. Kinney with a larger share of non-pension assets rather than attempt to divide pension plan retirement rights. Minnesota Statutes, Section 518.58, Division of Marital Property, in subdivision 3, states, "If liquid or readily liquidated marital property other than property representing vested pension benefits or rights is available, the court, so far as possible, shall divide the property representing vested pension benefits or rights by the disposition of an equivalent amount of the liquid or readily liquidated property."

Following the 1993 divorce, the South St. Paul Relief Association consolidated with PERA in 1997, under authority provided in Minnesota Statutes, Chapter 353A. Mr. Kinney was an active police officer at the time of that consolidation. Chapter 353 gives active members of a consolidating plan a choice of benefits. The choice included retaining the benefits provided under the local plan, or selecting PERA-P&F benefits, instead. These elections could occur shortly after consolidating, but most often individuals waited until the time of retirement to make the decision about whether to retire under the local plan or PERA-P&F benefit package. In 1999 Mr. Kinney retired, and he chose to retire under the PERA-P&F plan with a single-life PERA-P&F annuity.

Ms. Kinney is also employed in a position with coverage by PERA, although she is covered by the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) rather than by PERA-P&F. In 2005, Ms. Kinney was inquiring about benefits to which she would be entitled when she retired from her position. According to the attachments, prior to meeting with PERA

staff in 2005, Ms. Kinney was unaware that the South St. Paul Relief Association had consolidated into PERA, that Mr. Kinney retired with a PERA-P&F pension rather than a local plan pension, that his pension was much greater than expected under the divorce decree, and that PERA-P&F offers joint-and-survivor coverage which could have been used to provide a lifetime benefit for her in the event of Mr. Kinney's death.

In late 2005 or early 2006 Ms. Kinney sought relief through the courts to increase the monthly amount she was receiving to be consistent with Mr. Kinney's election of a PERA-P&F benefit rather than a local plan benefit, to require retroactive payments back to Mr. Kinney's 1999 retirement date, and to require PERA to revise the annuity form from a single-life annuity to a joint-and-survivor annuity. A court order in May 2006 required Mr. Kinney to increase the amounts paid to Ms. Kinney and to make a lump sum payment (\$88,000) covering back shortages, but Mr. Kinney died shortly thereafter, before payments were made. In July 2006, the court concluded that it had no authority to require PERA to revise the annuity form.

Policy on Revising Annuity Forms

Revising annuity forms once an annuity commences is prohibited. The concern is selection against the pension fund, destroying the financial basis of the defined benefit plan. With a properly funded plan, assets are sufficient if all assumptions used to determine necessary financing are satisfied, at least on average. One of those assumptions is life expectancy. Some individuals live longer than expected, with longer benefit payout periods than expected (resulting losses to the fund), but this is balanced by those who do not live as long as predicted (providing offsetting gains). If individuals were allowed to commence receipt of a single-life annuity, and later due to ill health are permitted to revise that choice to cover a second individual, that balance is destroyed, the plan's liabilities are expanded unpredictably and the life expectancies underlying the financing and the benefits are rendered meaningless.

Background Information

- A. Local Police and Paid Fire Plan Consolidations into PERA-P&F. Background information on local police and paid fire plan consolidations into the Public Employees Police and Fire Retirement Plan (PERA-P&F) is found in Attachment A.
- B. Joint-and-Survivor Annuities. Background information on joint-and-survivor annuity forms is found in Attachment B.
- C. Marriage Dissolution, Division of Pension Benefits. Background information on the division of pension benefits as marital property in a marriage dissolution is found in Attachment C.

Discussion and Analysis

H.F. 2725 (Hansen); S.F. 2467 (Metzen) would provide a Public Employees Police and Fire Retirement Plan (PERA-P&F) 50 percent joint-and-survivor annuity to the divorced spouse of a deceased South St. Paul police officer retiree, who died in 2006. Benefits are not payable retroactively. To be eligible for a benefit, the divorced surviving spouse must first repay the benefit differential between the single life annuity selected by the deceased retired police officer and a 50 percent joint-and-survivor annuity, with 8.5 percent interest.

H.F. 2725 (Hansen); S.F. 2467 (Metzen) raises the following pension and related public policy issues for Commission consideration and discussion:

1. General Prohibition against Annuity Form Revision. Revising annuity forms once benefits commence is prohibited. The Legislature and the Commission occasionally receive requests to allow an annuity form to be changed and those requests are rarely, if ever, granted. A recent request occurred in 2004, when the Commission heard H.F. 2180 (Sertich); S.F. 2228 (Tomassoni), which would have permitted a Hibbing school district employee covered by PERA-General who retired in 1978 and elected a single-life annuity to revise his annuity election to instead provide joint-and-survivor coverage for his spouse. The Commission heard the bill on March 10, 2004, but took no action. The current proposal raises more reservations than the 2004 bill, because the current bill would provide a joint-and-survivor annuity commencing after the annuitant, who had elected a single-life annuity, died.
2. Precedent Concerns. Commission staff cannot recall any situation where the Commission and the Legislature chose to allow selection or mandatory payment of a joint-and-survivor annuity well after retirement commenced or after the primary annuitant had died. The Commission may be concerned that H.F. 2725 (Hansen); S.F. 2467 (Metzen) would set a precedent leading to an undermining of the probability structure and financial base of Minnesota public pension funds. To limit impact, the draft

does state that the justification for this unusual action is to address harm caused by PERA. That, in turn, leads to the question of whether PERA did cause harm.

3. Question of Harm by PERA. Any payment from PERA-P&F required by H.F. 2725 (Hansen); S.F. 2467 (Metzen) as drafted is an additional liability to that pension fund, without a sufficient offsetting injection of assets. That action can be justified if PERA caused harm to Ms. Kinney, harm worthy of financial compensation. The Commission may determine whether or not PERA caused harm by reviewing the attached documents or any other documents provided to the Commission on this matter, and through testimony.
4. Commission Acting as a Judicial Body. To weigh the merits of the proposal and the issue of harm, the Commission would need to act as a judicial body rather than a legislative body, a role for which the Commission is not ideally equipped. The Commission may consider referring this matter to a Hearing Examiner, with the proposed benefit payable if the conclusion is that PERA had an obligation to keep the divorced spouse of a consolidation account member informed about his pension options when he retired, that PERA failed in fulfilling that obligation, and that a court is likely to have required that Mr. Kinney select PERA-P&F benefits with a joint-and-survivor annuity, naming his ex-spouse as the beneficiary in the event of his death, if a request for action had been brought to the courts..
5. Divorce Decree Issue. An issue is whether the court erred in trying to divide rights to pension benefits rather than providing a larger allocation of non-pension assets to Ms. Kinney. Given Minnesota Statutes, Section 518, Subdivision 3, the court should have taken the approach it did only if other assets were insufficient. The Commission may seek to determine through testimony whether other assets were insufficient, whether the court properly considered this matter, and whether Ms. Kinney's lawyer in that divorce case does not have some blame for the current situation.
6. PERA's Opposition to the Proposal. The issue is that PERA opposes the bill.
7. Cost to PERA-P&F. The issue is the cost that providing the annuity required by the draft legislation will impose on PERA-P&F. PERA recently estimated that the bill would cost PERA P&F \$103,961. That cost would be higher if the Commission were to amend the bills to provide greater than a 50 percent joint-and-survivor annuity.
8. Actuarial Condition of PERA-P&F. The issue is the ability of PERA-P&F to take on additional unfunded liability. Based on the most recent actuarial study for the plan (July 1, 2007), PERA-P&F has \$287 million in unfunded liability and has a 95 percent funding ratio. The required contributions to the plan, as determined by the actuary, to cover normal cost, plan expenses, and to retire the unfunded liability by the plan's full funding date, is 5.6 percent of payroll (\$38.9 million) more than the contributions being made to plan given the contribution rates in law. Contribution rate increases are being phased in over the next few years in an effort to address this contribution deficiency problem.

		2007
<u>Membership</u>		
Active Members		10,720
Service Retirees		4,938
Disabilitants		803
Survivors		1,291
Deferred Retirees		1,200
Nonvested Former Members		814
Total Membership		19,766
<u>Funded Status</u>		
Accrued Liability		\$5,669,346,646
Current Assets		<u>\$5,382,707,345</u>
Unfunded Accrued Liability		\$286,639,301
Funding Ratio	94.94%	
<u>Financing Requirements</u>		
Covered Payroll		\$699,841,244
Benefits Payable		\$280,266,868
Normal Cost	22.19%	\$155,328,501
Administrative Expenses	<u>0.10%</u>	<u>\$699,841</u>
Normal Cost & Expense	22.29%	\$156,028,342
Normal Cost & Expense	22.29%	\$156,028,342
Amortization	<u>3.77%</u>	<u>\$26,384,015</u>
Total Requirements	26.06%	\$182,412,357

	2007	
Employee Contributions	8.20%	\$57,386,982
Employer Contributions	12.30%	\$86,080,473
Employer Add'l Cont.	0.00%	\$0
Direct State Funding	0.00%	\$0
Other Govt. Funding	0.00%	\$0
Administrative Assessment	<u>0.00%</u>	<u>\$0</u>
Total Contributions	20.50%	\$143,467,455
Total Requirements	26.06%	\$182,412,357
Total Contributions	<u>20.50%</u>	<u>\$143,467,455</u>
Deficiency (Surplus)	5.56%	\$38,944,902

9. Possible Responsibility of Ms. Kinney. An issue is whether Ms. Kinney was sufficiently attentive, and whether she should have been aware of the consolidation of the local relief association with PERA as it occurred in 1997, or soon after, rather than in 2005. Perhaps earlier action through the courts may have avoided the current situation. A related issue is whether it is reasonable to create an annuity for Ms. Kinney in PERA-P&F despite Ms. Kinney's forfeiture of any right to a survivor annuity under the local South St. Paul Relief Association plan, the plan from which it was assumed that Mr. Kinney would eventually retire, when the divorce occurred. Through that action and the court decree which provided her with a monthly amount out of her husband's pension, it was understood that the benefit to Ms. Kinney would stop if Mr. Kinney died. Following the divorce, Mr. Kinney had the good fortune of having the relief association in which he was a member consolidate into PERA, which led to enhanced pension benefits beyond that envisioned at the time of the 1993 divorce. The Commission may wish to decide if it is proper to extend Mr. Kinney's good financial fortune after the divorce occurred to his divorced wife, through the request made through the draft legislation, creating a lifetime annuity for Ms. Kinney in PERA-P&F despite the forfeiture of any direct survivor benefit right in the local plan as a result of the divorce.

Potential Amendments for Commission Consideration

1. Amendment H2725-1A is a technical amendment to correct a drafting error.
2. Amendment H2725-2A is substantive, revising the optional annuity from a 50 percent joint-and-survivor option to a different option to be determined by the Commission. PERA-P&F offers 25 percent, 50 percent, 75 percent, and 100 percent joint-and-survivor options. A 75 percent or 100 percent joint-and-survivor option will provide a larger benefit to Ms. Kinney, but it would increase the amount she must pay to PERA-P&F to commence receipt of the annuity, and increase the net cost to PERA-P&F.
3. Amendment H2725-3A is also substantive and can be used with the prior amendments. This amendment would make payment to Ms. Kinney contingent upon a review by a Hearings Examiner, and a finding that PERA had an obligation to keep the divorced spouse of a consolidation account member informed about his pension options when he retired, that PERA failed in fulfilling that obligation, and that a court is likely to have required that Mr. Kinney select PERA-P&F benefits with a joint-and-survivor annuity, naming his ex-spouse as the beneficiary in the event of his death, if a request for court action had been brought to it. As drafted, Ms. Kinney must cover the cost of the hearing.

Attachment A

Background Information on Local Public Safety Pension Plan Consolidations with PERA-P&F

Minnesota Statutes, Chapter 353A, enacted in 1987, authorizes local police or paid fire relief associations to undertake an administrative consolidation of the relief association with the Public Employees Police and Fire Retirement Plan (PERA-P&F) and authorizes the active members of a consolidated local relief association to elect between the local relief association benefit plan coverage and that of PERA-P&F. Individuals who were deferred members or benefit recipients as of the date of consolidation have a more limited option. The PERA-P&F provision available to individuals who were retired, deferred, or disabled on the effective date of the consolidation is limited to an option to have the post-retirement adjustment determined under the PERA-P&F procedure rather than those applicable to the local plan. Except for that limited option, the benefit provisions of the local plan apply.

A local relief association consolidation with PERA-P&F is a voluntary action on the part of the relief association membership and the applicable municipality. The consolidation action is initiated by a petition signed by a minimum proportion of the relief association membership (either 10 percent or 30 percent of the relief association, depending on support or opposition of the relief association to the 1987 consolidation legislation). If the petition is sufficient in the number of signatures and verified, the consolidation question is subject to a membership referendum subject to a majority vote (either a majority of those voting or a majority of all members voting or not voting).

If the referendum prevails, the governing body of the applicable city must act upon the proposed action. If the governing body grants preliminary approval, an actuarial assessment of the possible liability impact of the benefit plan coverage option is prepared. The governing body then considers final approval after receipt of the consolidation actuarial work to effect the consolidation. If the consolidation is approved on final municipal approval, the local relief association ceases to exist as a pension fund and all administrative duties relating to the local plan shift to PERA, and the State Board of Investment (SBI) invests the assets of the prior relief association.

Following the consolidation, members can retain their current benefit coverage or elect all or portions of the PERA-P&F benefit plan, as applicable given the status of the individual at the time of the consolidation. Individuals who are active members at the time of the consolidation are authorized under law to retain all rights under the local plan or to elect the PERA-P&F plan in its entirety. For individuals who at the time of the consolidation are disabilitants, deferred retirees, retirees, or survivors, the election is limited to the manner in which prospective post-retirement adjustments are calculated. For these deferred members or benefit recipients, the benefit continues as it was specified in the local plan, including any post-retirement increases paid to date. From the date of consolidation forward, the individual elects whether to continue adjustments under the provisions of the local plan or to have adjustments computed from that date forward under the system applicable to PERA-P&F. The retirees, deferred retirees, disabilitants, and survivors were given a period of time following the consolidation to make an election. If no election was made, the individual automatically retained all local plan benefits. The period of time for making this election presumably was a period of a few months. The statute authorizes PERA's board to set the length of the period following the consolidation, sufficient in length to provide adequate time to counsel the members.

Before January 1, 1999, 44 local relief associations consolidated with PERA-P&F. No local relief association has consolidated with PERA-P&F since January 1, 1999. The various relief associations with completed consolidations are as follows:

Consolidated Relief Associations

Police				Fire		
Albert Lea	Columbia Heights	Mankato	St. Louis Park	Albert Lea	Hibbing	St. Cloud
Anoka	Crookston	New Ulm	St. Paul	Austin	Mankato	St. Louis Park
Austin	Crystal	Red Wing	Virginia	Chisholm	Red Wing	St. Paul
Bloomington	Duluth	Richfield	West St. Paul	Columbia Heights	Richfield	South St. Paul
Brainerd	Faribault	Rochester	Winona	Crookston	Rochester	West St. Paul
Buhl	Fridley	South St. Paul		Duluth	South St. Paul	Winona
Chisholm	Hibbing	St. Cloud		Faribault		

Only four police or paid fire relief associations remain freestanding – the Fairmont Police Relief Association, the Minneapolis Fire Department Relief Association, Minneapolis Police Relief Association, and the Virginia Fire Department Relief Association.

Attachment B

Background Information on Joint-and-Survivor Annuity Forms

1. Joint-and-Survivor Annuities, In General. For general public employee and statewide public safety plans, the total value of the retirement benefit is a function of the individual's salary near retirement and total years of service, and an individual may choose to take that benefit in a variety of forms. A single-life (or straight-life) annuity covers only the retiree's life. A joint-and-survivor annuity is an annuity form that provides coverage to another individual in addition to the retired or disabled employee. The other individual is often a spouse, but it could also be another adult or a child, unless specifically restricted under the laws or bylaws governing a particular plan. With a joint-and-survivor annuity, the intent is to provide continuing income to the other individual for life, following the death of the primary annuitant. With a few exceptions, any of these annuities must have the same value whether it covers only the retired member, or the retired member and spouse, or some other individual or individuals. One of these exceptions is a subsidized bounce-back feature on joint-and-survivor annuities, which is discussed later.

To achieve this benefit equivalence requirement, when a joint-and-survivor annuity is selected the monthly benefit received by the primary annuitant must be reduced in order to finance the continuing coverage to the survivor. Otherwise, the total value received would be higher than that received by a comparable single individual, or a comparable married individual who decides not to take a joint-and-survivor annuity. The amount of the reduction is a function of the ages of the annuitant and designated beneficiary. If the retiree is male and the joint-and-survivor annuity provides coverage to a wife who is much younger than the primary annuitant, the amount of the monthly reduction can be quite large, due to the likelihood that the female will outlive the male by many years.

The amount of the reduction also depends upon the extent of the continuing coverage. Plans typically permit several different joint-and-survivor annuities. Under a 100 percent joint-and-survivor option, the designated beneficiary receives the same monthly benefit as before the death of the primary annuitant occurred. Because of the level of this continuing coverage, a 100 percent joint-and-survivor annuity requires a larger monthly reduction than options offering lesser continuing coverage. With a 50 percent joint-and-survivor option, the designated beneficiary would receive a monthly benefit that is half that previously received. Fifty percent, 75 percent, and 100 percent joint-and-survivor annuities are the most common joint-and-survivor offerings, but others also exist.

2. Plans with Subsidized Bounce-Back Feature on Joint-and-Survivor Annuities. There is a provision in many of the larger Minnesota state retirement plans (PERA plans, the Teachers Retirement Association (TRA), the first class city teacher plans, and most Minnesota State Retirement System (MSRS) plans) which slightly modifies the general actuarial equivalence requirement. In 1989, bounce-back provisions were added to the joint-and-survivor annuity laws in these plans. Under this modification, if the individual to receive the second half of the joint-and-survivor annuity predeceases the primary annuitant, the monthly benefit is restored (bounces back) to the monthly benefit level that would have been received if the individual had selected a single life annuity. In the plans with a subsidized feature, this bounce-back is provided without any further reduction in the monthly benefits to cover the cost of the bounce-back. The bounce-back cost is shifted to all employers and employees who fund the plan through their contributions.

Attachment C

Background Information on the Division of Pension Benefits as Marital Property in a Marriage Dissolution Action

Pension benefits or pension rights acquired during the course of a marriage have been recognized as marital property available for division for decades by the Minnesota courts and specifically by state statute since 1978 (see Laws 1978, Chapter 772, Section 48).

For private section plans, federal law (Section 206(d)(3) of the Employee Retirement Income Security Act of 1974 (ERISA)) recognized pension interests as marital property subject to division by the court upon a marriage dissolution in an exception to the general prohibition on the assignment or alienation of pension benefits if a "qualified domestic relations order (QDRO)" procedure is utilized. Public pension plans are not included in much ERISA regulation and the QDRO provisions of ERISA do not apply to Minnesota public pension plans.

Before 1987, Minnesota public pension benefits divided in a marriage dissolution award were not enforceable in favor of the second payee against the pension plan because of statutory non-assignment/non-garnishment/non-alienation provisions (see Minnesota Statutes 1986, sections 3A.13; 352.15; 352B.071; 353.15; 354.10; 422A.24; 424A.02, Subdivision 6; and 490.126), so the division was enforceable by garnishment or attachment by the ex-spouse only upon the receipt of the pension benefit by the public pension plan member or upon the deposit of the benefit in the plan member's bank account.

In 1987 (Laws 1987, Chapter 157), the Minnesota public pension non-assignment/non-garnishment/non-alienation provisions were amended to permit the enforcement of a marriage dissolution judgment dividing public pension interests against the public pension plan if the court judgment met various conditions designed to avoid the imposition of any additional unfunded liability on the pension plan and of any extended administrative burden on the pension plan administrators. The 1987 public pension plan marital property marriage dissolution division conditions (coded in Minnesota Statutes, Sections 518.58) were:

- (1) Payment Only If No Liquid Marital Property Exists. The division of marital property is, if possible, to be effected by the sale or disposition of liquid assets (e.g., cash and securities) or of readily liquidated assets (marketable personal or real property) before pension benefits are divided.
- (2) Payment Only Upon Plan Member Retirement. The division may not occur until the plan member applies for a benefit and the benefit becomes payable.
- (3) Limited to Benefit Plan Terms. The division is payable only to the extent that the benefit plan terms permit.
- (4) Limited to Benefit Duration. The division may not be a benefit payable longer than the recipient's duration of receipt.
- (5) No Lump Sum Payment. The division of a retirement annuity may not be in the form of a lump sum payment.
- (6) Designated Trustee For Payment of Any Residual Amount. Any divided benefit payable to an ex-spouse who predeceases the plan member is payable only to a trustee designated for that purpose.

The 1987 amendments, which were drafted in large part by the staff of the Legislative Commission on Pensions and Retirement and which were reviewed and recommended by the Legislative Commission on Pensions and Retirement, also included an authorization of the division of pension rights as a survivor benefit if the pension plan by law allows the payment of a survivor benefit, included a procedure for the valuation of pension benefits or rights by an actuary, and included the directive for the provision of pension information by public pension plans to the parties of an actual or potential dissolution proceeding.

In 1988 (Laws 1988, Chapter 668, Sections 15, 16, and 20), the 1987 public pension plan marital property division provisions were broadened to include private sector pension plans.

2007 Minnesota Statutes

518.58 DIVISION OF MARITAL PROPERTY.

Subdivision 1. **General.** Upon a dissolution of a marriage, an annulment, or in a proceeding for disposition of property following a dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property and which has since acquired jurisdiction, the court shall make a just and equitable division of the marital property of the parties without regard to marital misconduct, after making findings regarding the division of the property. The court shall base its findings on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, opportunity for future acquisition of capital assets, and income of each party. The court shall also consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker. It shall be conclusively presumed that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife. The court may also award to either spouse the household goods and furniture of the parties, whether or not acquired during the marriage. The court shall value marital assets for purposes of division between the parties as of the day of the initially scheduled prehearing settlement conference, unless a different date is agreed upon by the parties, or unless the court makes specific findings that another date of valuation is fair and equitable. If there is a substantial change in value of an asset between the date of valuation and the final distribution, the court may adjust the valuation of that asset as necessary to effect an equitable distribution.

Subd. 1a. **Transfer, encumbrance, concealment, or disposition of marital assets.** During the pendency of a marriage dissolution, separation, or annulment proceeding, or in contemplation of commencing a marriage dissolution, separation, or annulment proceeding, each party owes a fiduciary duty to the other for any profit or loss derived by the party, without the consent of the other, from a transaction or from any use by the party of the marital assets. If the court finds that a party to a marriage, without consent of the other party, has in contemplation of commencing, or during the pendency of, the current dissolution, separation, or annulment proceeding, transferred, encumbered, concealed, or disposed of marital assets except in the usual course of business or for the necessities of life, the court shall compensate the other party by placing both parties in the same position that they would have been in had the transfer, encumbrance, concealment, or disposal not occurred. The burden of proof under this subdivision is on the party claiming that the other party transferred, encumbered, concealed, or disposed of marital assets in contemplation of commencing or during the pendency of the current dissolution, separation, or annulment proceeding, without consent of the claiming party, and that the transfer, encumbrance, concealment, or disposal was not in the usual course of business or for the necessities of life. In compensating a party under this section, the court, in dividing the marital property, may impute the entire value of an asset and a fair return on the asset to the party who transferred, encumbered, concealed, or disposed of it. Use of a power of attorney, or the absence of a restraining order against the transfer, encumbrance, concealment, or disposal of marital property is not available as a defense under this subdivision.

Subd. 2. **Award of nonmarital property.** If the court finds that either spouse's resources or property, including the spouse's portion of the marital property as defined in section 518.003, subdivision 3b, are so inadequate as to work an unfair hardship, considering all relevant circumstances, the court may, in addition to the marital property, apportion up to one-half of the property otherwise excluded under section 518.003, subdivision 3b, clauses (a) to (d), to prevent the unfair hardship. If the court apportions property other than marital property, it shall make findings in support of the apportionment. The findings shall be based on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, and opportunity for future acquisition of capital assets and income of each party.

Subd. 3. **Sale or distribution while proceeding pending.** (a) If the court finds that it is necessary to preserve the marital assets of the parties, the court may order the sale of the homestead of the parties or the sale of other marital assets, as the individual circumstances may require, during the pendency of a proceeding for a dissolution of marriage or an annulment. If the court orders a sale, it may further provide for the disposition of the funds received from the sale during the pendency of the proceeding. If liquid or readily liquidated marital property other than property representing vested pension benefits or rights is available, the court, so far as possible, shall divide the property representing vested pension benefits or rights by the disposition of an equivalent amount of the liquid or readily liquidated property.

(b) The court may order a partial distribution of marital assets during the pendency of a proceeding for a dissolution of marriage or an annulment for good cause shown or upon the request of both parties, provided that the court shall fully protect the interests of the other party.

Subd. 4. **Pension plans.** (a) The division of marital property that represents pension plan benefits or rights in the form of future pension plan payments:

(1) is payable only to the extent of the amount of the pension plan benefit payable under the terms of the plan;

(2) is not payable for a period that exceeds the time that pension plan benefits are payable to the pension plan benefit recipient;

(3) is not payable in a lump sum amount from defined benefit pension plan assets attributable in any fashion to a spouse with the status of an active member, deferred retiree, or benefit recipient of a pension plan;

(4) if the former spouse to whom the payments are to be made dies prior to the end of the specified payment period with the right to any remaining payments accruing to an estate or

to more than one survivor, is payable only to a trustee on behalf of the estate or the group of survivors for subsequent apportionment by the trustee; and

(5) in the case of defined benefit public pension plan benefits or rights, may not commence until the public plan member submits a valid application for a public pension plan benefit and the benefit becomes payable.

(b) The individual retirement account plans established under chapter 354B may provide in its plan document, if published and made generally available, for an alternative marital property division or distribution of individual retirement account plan assets. If an alternative division or distribution procedure is provided, it applies in place of paragraph (a), clause (5).

History: 1951 c 551 s 5; 1974 c 107 s 22; 1978 c 772 s 53; 1979 c 259 s 27; 1979 c 289 s 8; 1981 c 349 s 7; 1982 c 464 s 2; 1986 c 444; 1987 c 157 s 17; 1988 c 590 s 2; 1988 c 668 s 20; 1989 c 248 s 8; 1991 c 266 s 4,5; 1992 c 548 s 6; 1993 c 239 art 4 s 1; 2005 c164 s 29; 1Sp2005 c 7 s 28; 2006 c 280 s 18

2007 Minnesota Statutes

518.581 SURVIVING SPOUSE BENEFIT.

Subdivision 1. **Award of benefit.** If a current or former employee's marriage is dissolved, the court may order the employee, the employee's pension plan, or both, to pay amounts as part of the division of pension rights that the court may make under section 518.58, or as an award of maintenance in the form of a percentage of periodic or other payments or in the form of a fixed dollar amount. The court may, as part of the order, award a former spouse all or part of a survivor benefit unless the plan does not allow by law the payment of a surviving spouse benefit to a former spouse.

Subd. 2. **Payment of funds by retirement plan.** (a) If the court has ordered that a spouse has an interest in a pension plan, the court may order the pension plan to withhold payment of a refund upon termination of employment or lump sum distribution to the extent of the spouse's interest in the plan, or to provide survivor benefits ordered by the court.

(b) The court may not order the pension plan to:

- (1) pay more than the equivalent of one surviving spouse benefit, regardless of the number of spouses or former spouses who may be sharing in a portion of the total benefit;
- (2) pay surviving spouse benefits under circumstances where the plan member does not have a right to elect surviving spouse benefits;
- (3) pay surviving spouse benefits to a former spouse if the former spouse would not be eligible for benefits under the terms of the plan; or
- (4) order survivor benefits which, when combined with the annuity or benefit payable to the pension plan member, exceed the actuarial equivalent value of the normal retirement annuity form, determined under the plan documents of the pension plan then in effect and the actuarial assumptions then in effect for calculating optional annuity forms by the pension plan or for calculating the funding requirements of the pension plan if no optional annuity forms are provided by the pension plan.

(c) If more than one spouse or former spouse is entitled to a surviving spouse benefit, the pension plan shall pay each spouse a portion of the benefit based on the ratio of the number of years the spouse was married to the plan member to the total number of years the plan member was married to spouses who are entitled to the benefit.

Subd. 3. **Notice to former spouse.** A pension plan shall notify a former spouse of an application by the employee for a refund of pension benefits if the former spouse has filed with the pension plan:

- (1) a copy of the court order, including a withholding order, determining the former spouse's rights;
- (2) the name and last known address of the employee; and
- (3) the name and address of the former spouse.

A pension plan shall comply with an order, including a withholding order, issued by a court having jurisdiction over dissolution of marriage that is served on the pension plan, if the order states the name, last known address of the payees, and name and address of the former spouse, or if the names and addresses are provided to the pension plan with service of the order.

Subd. 4. **Definitions.** For purposes of this section, the following terms have the meanings given in this subdivision.

(a) "Current or former employee" or "employee" means an individual who has an interest in a pension plan.

(b) "Surviving spouse benefit" means (1) a benefit a surviving spouse may be eligible for under the laws and bylaws of the pension plan if the employee dies before retirement, or (2) a benefit selected for or available to a surviving spouse under the laws and bylaws of the pension plan upon the death of the employee after retirement.

History: 1987 c 157 s 18; 1988 c 668 s 21; 1994 c 386 s 1

MEISINGER AND MEISINGER

Attorneys at Law
60 East Marie Ave., #109
West St. Paul, Minnesota 55118
Telephone (651) 457-2827

EDMUND C. MEISINGER
STEPHEN M. MEISINGER

E.C. MEISINGER, SR.
(1900 - 1988)

March 7, 2008

Ms. Mary Most Vanek
Executive Director
PERA
60 Empire Drive
Suite 200
St. Paul, MN 55103

Re: Senate File 2467/House File 2725

Dear Ms. Vanek:

Your letter to Cheryl Kinney dated February 28, 2008 was reviewed.

Mayor Randy Kelly made an incorrect election and apparently, was allowed to correct his election. We also believe some school districts were underfunded and the legislature provided assistance for underfunding.

Cheryl Kinney's problem arises from the fact that South St. Paul PRA did not allow for a contingent annuitant option.

Unknown to Cheryl, Craig collected the PERA Pension when he retired in 1999 and failed to notify PERA of Cheryl's interest in his pension or Cheryl Kinney of this change in pension. The benefit (payment to Craig) from PRA to PERA in essence, doubled Chief Kinney's retirement payments.

We had requested information regarding Mr. Kinney's retirement and have never received any information. Therefore, we are operating without access to your file and had to make certain assumptions. In Cheryl Kinney's Estimated Retirement Benefits Report, under Section 1, there is request for information concerning the name of the former spouse and the former spouse's birthdate. Presumably, Mr. Kinney's file would have a similar document so that PERA should have been aware of a prior dissolution and Craig's status is divorced (not single). PERA had the dissolution decree in Cheryl's file before Craig retired.

We believe that the PERA actuaries should have analyzed the risks involved with taking over a pension plan from South St. Paul to determine how much additional money should be paid by the City of South St. Paul to consolidate the PRA Pension into PERA. Retirees have an obligation to fully disclose the facts and PERA has a similar duty to obtain the correct facts.

We believe that the reason that the Police Retirement was not converted to PERA was that Chief Kinney was holding back the Police consolidation until after the dissolution was over. We are bothered by the fact that he was represented by the LeVander Law Firm who also was the South St. Paul City Attorney. This consolidation effort, certainly, was taking place prior to 1997 and was not disclosed to the Court in 1996 or to Cheryl Kinney to her disadvantage.

Cheryl Kinney no longer lived in South St. Paul after the divorce and did not know about this consolidation effort. The matter could have been handled prior to Mr. Kinney's retirement in 1999. The harm to Cheryl Kinney is that her pension terminates on Craig Kinney's death while on her death, Mr. Kinney would receive his full pension. This unfairness, was recognized by Judge Sutherland when she commented in her Memo attached to her Findings and Decree in May of 2006:

"The PRA merger into PERA was a windfall and not earned by Petitioner from any new job assignment or promotion"

"This windfall was not known to either party at the time of the dissolution in 1993 and was not disclosed in 1997. Any of these occasions would have allowed the Respondent's portion of the retirement to have been separated which was not allowed under PRA but permitted under PERA."

"Petitioner unilaterally selected a single annuitant payment option which is inequitable and unfairly detrimental to the Respondent."

The Judge indicated that "this decision is considered a interpretation of the decree rather than a modification. What the Court, in essence, indicated was that Mr. Kinney's actions were unfair and detrimental to Cheryl Kinney."

While it could be suggested that Cheryl Kinney should have know and taken action to protect herself, the same can be said that PERA should have disclosed the situation. Assessing blame is not productive.

Your indication in paragraph 4 of your letter, regarding the amount to be repaid to PERA as defined in the proposed legislation has been estimated to be approximately \$66,000. Our

calculations indicate that the amount would be closer to \$50,000. Since, we do not have access to your files, the amounts paid and the reduction amount in each year are estimates and we used a 6% interest rate on the balances. Why was 7.1% selected?

You indicated that it was your duty to oppose the passage of legislation because it spends money out of the fund that was not included in overall costs anticipated by your actuaries.

Clearly, your actuaries would consider situations beyond Craig's "single" status when PERA took over PRA. Craig, being single, could have remarried to a much younger spouse and took the contingent annuitant option for the new spouse. On his death, the new spouse could very well have claimed benefits for many years under PERA. Actuaries certainly must consider various potential scenarios in determining the real risk to the PERA Fund.

Your comment about legislation overriding the provisions of a legal court decree raises a question. There is no court decree between Cheryl Kinney and PERA and the Court Findings and Judgment in May of 2006 is not a new decree but "an interpretation of the earlier decrees rather than a modification."

In substance, it is Cheryl's position that since PRA merged/morphed into PERA, there was a duty certainly on Craig as well as on PERA to notify those affected namely: Cheryl Kinney.

Yours truly,

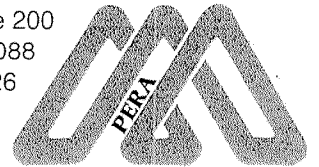


Edmund C. Meisinger

ECM\tjc

c: Senator James Metzen
Representative Rick Hansen
Representative Mary Murphy
Senator Don Betzold
Mr. Larry Martin, LCPR Executive Director
Ms. Cheryl Kinney

Public Employees Retirement Association of Minnesota
60 Empire Drive, Suite 200
Saint Paul, Minnesota 55103-2088
Member Information Services: 651-296-7460 or 1-800-652-9026
Employer Response Lines: 651-296-3636 or 1-888-892-7372
PERA Fax Number: 651-297-2547
PERA Website: www.mnpera.org



February 28, 2008

Ms. Cheryl Kinney
2501 LOCKWOOD DR
ST PAUL MN 55120-1746

Dear Ms. Kinney:

I am writing to inform you that if Senate File 2467/House File 2725 is heard before the Legislative Commission on Pensions and Retirement or any other legislative committee, I will be opposing the provisions of this bill on behalf of PERA.

Although the bill requires that you repay to PERA the difference (plus interest) between what Craig would have received -- if he had been required to elect a 50 percent joint and survivor lifetime annuity option when he retired -- and the benefits he did receive, there is still an additional cost to PERA of providing you a lifetime joint and survivor annuity payment based upon his account. The amount you would be required to repay to PERA as defined in the proposed legislation has been estimated to be \$66,863.

The initial cost to the PERA Police and Fire Fund of Craig's lifetime single life annuity was \$721,265. Unfortunately, he did not live as long as was expected, so we paid out to him (with some of this having been paid to you) a total of \$474,121. Therefore, the Police and Fire Fund gained \$247,144 due to his untimely death. With the amount you are required to repay, the PERA Police and Fire Fund would increase by a total of \$314,007 to fund your future benefit.

The cost of your lifetime benefit in the form of a 50 percent joint and survivor annuity, payable effective July 1, 2008, is \$417,968. Therefore, the cost to provide the benefit provided for in the proposed legislation is \$103,961 more than what PERA would have otherwise paid out in benefits.

As the executive director and representative for the PERA Board of Trustees testifying on legislation that affects PERA's retirement plans, it is my fiduciary duty to oppose passage of this legislation. It not only spends money out of the fund that was not included in the overall costs anticipated by our actuaries, but it would open the door for any number of former spouses to come forward and claim a right to a different payment distribution through legislation that overrides the provisions of a legal court decree.

LCF&R FEB 28 2008

Ms. Cheryl Kinney
Page 2
February 28, 2008

I am providing below a chronology of the events that lead up to your request for a 50 percent joint and survivor optional annuity. If I have misrepresented any of the facts as you recall them, please let me know. While I do not intend to use all of this detail in testimony, if I am asked what role PERA played in not ensuring that you received your dissolution payments, I will provide a snap shot of the sequence of events as we know them.

Chronology

The record shows that the initial marriage dissolution decree (filed August 27, 1993) did award to Cheryl Kinney a "marital portion" of Craig Kinney's benefit. A letter (dated November 11, 1994) was sent to Cheryl by the South St. Paul Police Relief Association indicating that no benefit could be paid until Craig Kinney retired. Subsequent to the award of the initial decree, an amendment (filed January 24, 1996) was agreed upon that required Craig to pay Cheryl directly an amount equal to the "marital portion" as defined in the decree, so the South St. Paul Police Relief Association was not required to provide a direct payment to Cheryl.

Upon consolidation of the South St. Paul Police Relief Association under PERA's administration on May 31, 1997, our records show that Craig Kinney checked "single" in the section of his PERA enrollment application that asked for marital status. All individuals who were part of the South St. Paul Police Relief Association were asked to complete a PERA enrollment application to help us collect the data we needed to establish the individual computer records we needed to administer the Relief Association benefits and contribution collections. At no time were we informed of, or provided with, any documentation regarding the marriage dissolution decrees in effect for Craig Kinney. Even if we had been informed, the 1996 amended decree did not require that we establish a separate payment to Cheryl upon Craig's retirement.

Cheryl visited our office in November 2005 and brought to us the original (1993) decree which required that the retirement plan administer payment of the "marital portion" of the benefit. We immediately began payments effective December 1, 2005. Following distribution of the second payment to Cheryl in January, Craig Kinney's attorney provided to us a copy of the 1996 amended decree requiring Craig to make payments directly to Cheryl. We therefore discontinued our direct payments to Cheryl.

Ms. Cheryl Kinney
Page 3
February 28, 2008

In May 2006 we received a further amendment of the marriage dissolution decree (filed May 11, 2006) directing PERA to make a payment directly to Cheryl equal to the marital portion of Craig Kinney's PERA benefit. This benefit amount was higher than what would have been paid had he retired under the benefit provisions of the South St. Paul Police Relief Association. We again immediately began to make those payments and as directed, increased the amount in August by \$2,000 to help offset the past due amount owed to Cheryl by Craig. This additional amount was directed by the court decree we received in May.

Under the terms of the laws governing the distribution of pension payments as part of a marriage dissolution, Cheryl's payments had to be discontinued the first of the month following Craig's death. The dissolution decree did not require Craig to choose a joint and survivor payment option, which would have been payable, upon his death, to Cheryl for her lifetime. It is understandable why this was not included in the decree, because the South St. Paul Police Relief Association benefits did not provide for this type of payment option for a former spouse.

It has been brought to my attention that although the South St. Paul Police Relief Association started exploring the idea of consolidating under PERA's administration as early as 1994, Cheryl was not aware of the transfer of administration that occurred in 1997. Craig elected to retire effective June 1, 1999 and selected a single life annuity payment for his lifetime. Once that annuity payment selection was made and he began receiving his payment, the form of payment could not be changed, regardless of any subsequent amendment to the marriage dissolution decree.

While it may appear that we can go back and modify benefit selections through repaying benefits that otherwise would not have been paid, this bill would increase our costs, but more importantly would set a significant precedent. If you have any questions about our position, please do not hesitate to contact me directly at (651) 296-8358.

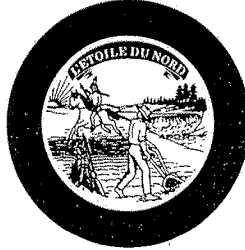
Sincerely,

Mary Most Vanek
Executive Director

DFL CONSTITUENT SERVICES

State Office Building

St. Paul, MN 55155-1298



**Minnesota
House of
Representatives**

DATE: March 9, 2007
TO: Mr. Edward Burek, Deputy Director
FROM: Marye Knudson
DFL Constituent Services, 297-8168
RE: Ms. Cheryl Kinney

Here is the requested information regarding Ms. Cheryl Kinney, the ex-spouse of the late Mr. Craig Kinney.

The involved parties are:

Ms. Cheryl Kinney
2501 Lockwood Drive
Mendota Heights, MN 55120
(651) 452-7898
DOB: 5/6/1943

Mr. Craig Kinney (deceased)
7211 Brittany Lane
Inver Grove Heights, MN 55076
DOB: 3/27/1942
DOD: 9/9/2006

The couple divorced in August 1993. Mr. Kinney started working for the South St. Paul police department in 1966 and retired on June 1, 1999. Mr. Kinney elected a life only annuity at retirement.

Mr. Kinney was covered under the South St. Paul Police Relief Association and the divorce decree awards Ms. Kinney a portion (about 50 percent) of that retirement plan. The divorce decree also states that Ms. Kinney was supposed to be treated (by PRA) as a "protected distribute" and sent plan reports and notices of any amendments. This did not happen (she is not certain if the divorce decree was given to PRA) and she was not aware that PRA merged into PERA in 1997.

Mr. Kinney's PERA benefit was significantly larger than his PRA benefit, but he did not disclose this information and he paid Ms. Kinney the appropriate percentage of what his PRA benefit would have been. The divorce decree stated that he was to pay her directly.

Ms. Kinney found out, in 2005, that he was receiving PERA benefits and they went to court in 2006. She was awarded the same percentage of his PERA benefit and Mr. Kinney was ordered to pay arrears. Ms. Kinney began receiving the larger (PERA) benefit in 2006, but when Mr. died on 9/9/2006, the benefits stopped. Ms. Kinney and her attorney are pursuing the arrears

March 9, 2007

Page 2

through his estate. The judge did not award her a survivor annuity because he indicated that he did not have jurisdiction to require PERA to change the election.

Ms. Kinney asserts that if she had been made aware of the merger, she would have gone back to the court to amend the pension provisions in the divorce decree in 1997 (the time of the merger). She believes that she could then have been awarded a survivor annuity, which PERA has indicated she cannot now receive.

Rep. Hansen would like to look at legislation to grant Ms. Kinney a survivor annuity.

I have attached documentation that Ms. Kinney provided to me, including a 9/7/2006 letter that her attorney sent to PERA and a copy of the May 2006 court decision. Please call me at 297-8168 if you have any questions.

MEISINGER AND MEISINGER

Attorneys at Law
60 East Marie Ave., #109
West St. Paul, Minnesota 55118
Telephone (651) 457-2827

EDMUND C. MEISINGER
STEPHEN M. MEISINGER

E.C. MEISINGER, SR.
(1900 - 1988)

September 7, 2006

Public Employees Retirement
Association of Minnesota
60 Empire Drive
Suite 200
St. Paul, MN 55103

Attention: Lance LaFrambois

Re: Craig R. Kinney/Cheryl Kinney

Dear Mr. LaFrambois:

There seems to be a conflict between the Affidavit you wrote and signed on July 26, 2006 for Craig Kinney's Attorney to use in Court and the information you spoke with Cheryl Kinney about. You told Cheryl that if Craig made improper application, the single life option could be changed. That is the case in this matter. As you know, there is an ongoing dispute between the Kinneys regarding Craig's Pension from the South St. Paul PRA due to its subsequent merger with PERA. The dispute required a Court review of the interest of Cheryl.

Attached is the May 11, 2006 Order which you have already have. I believe you are following that Order regarding payment to Cheryl Kinney of 40.96% of Craig's Pension (currently \$2,524 per month). That Order indicates that an additional \$2,000 per month should be paid towards arrearages of \$88,147 plus interest. Cheryl had to call PERA to see if you were going to follow this Order. On July 26, 2006, Cheryl received the July 1, 2006 payment. Craig has not made arrangements to pay the money, has not provided a Note and Mortgage and has not provided Insurance. Additionally, he has not brought the arrearages for 2006 in the amount of \$10,097 current.

After the May 11, 2006 Order, Mr. Kinney's Attorney made a Motion for relief to correct, rescind, etc., the May 11, 2006 Order. That request was denied by the attached Order dated July 27, 2006. We also made a Motion to request the Court to have PERA review the single annuitant option selected by Mr. Kinney in 1999. We requested the Court to direct PERA to determine the cost of the correction and the benefits Mr. Kinney would receive under a survivor benefit option in favor of Cheryl. Our interest

was in a 25% or 50% survivor benefit option (a letter was written by Lance L) Our Motion was also denied (we believe) due to the fact that your July 26, 2006 Affidavit was sent to the Judge and the Judge felt she could not override that.

Cheryl's concern stems from the fact that Cheryl is not protected in the event Craig dies since her benefit is a portion of his. For example, if Craig predeceases Cheryl, Craig gets zero Pension and Cheryl, of course, receives nothing. On the other hand, if Cheryl dies, Craig receives the full Pension. In view of the length of the marriage, this lopsidedness seemed inequitable. We feel that PERA should review and correct this situation.

The background and facts of this case are as follows:

- a. South St. Paul PRA did not allow the severance of a spouse's benefit and required that the benefit be paid to the employee. Then the employee would have to pay the ex-spouse her marital share.
- b. The divorce took place in 1993 and the Decree was amended in 1996. At the time of the divorce, Cheryl was and still is a PERA member and her divorce Decree was on file in the PERA office.
- c. In 1997, PRA merged with PERA and that merger was not disclosed to Cheryl and was unknown to Cheryl.
- d. In 1999, Craig retired and again did not disclose to Cheryl that he was receiving benefits from PERA and not PRA. Craig unilaterally selected the single annuitant option in effect leaving Cheryl without anything in the event of Craig's death.
- e. That had Craig selected the 50% survivorship option, his benefits in 2006 would be reduced from \$6,162 to \$5,632 which is \$530 per month as shown in the March 10, 2006 letter from Pension Services Division to Mr. Kinney (copy attached).
- f. That the interest of Cheryl was not disclosed by Craig until it was discovered by Cheryl in late 2005 and it was not disclosed to Cheryl by PRA when PRA merged into PERA. Cheryl was to be treated as a protected informed member of Craig's retirement fund.
- g. That in 1997, PERA in accepting the merger of PRA into PERA should have been aware through the exercise of reasonable diligence of Cheryl's interest and should have notified Cheryl.
- h. Craig is represented by Ms. O'Reilly of the firm that represents the City of South St. Paul. That law firm was involved in the PRA to PERA process. This could have been a

conflict of interest in Craig's Divorce/retirement issue.

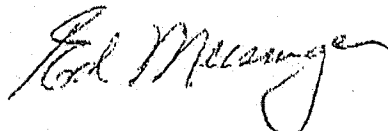
At this point, Cheryl is willing to pay the expense of revising the election to a survivor benefit option. To facilitate that correction, Cheryl would reduce her 40.96% of Craig's benefit by the appropriate amount so that Craig's benefit would remain the same (i.e. \$6,162 - \$2,524 per month that Cheryl is receiving) which is \$3,638. Of course, Cheryl's benefit would be reduced by \$530 per month.

This is a formal request to PERA to correct this situation because of Craig's improper application and his failure to disclose the pertinent facts (i.e. Cheryl's interest) when his election was made.

We feel this posture is appropriate because of the inequity to Cheryl and the fact that Cheryl was entitled to these benefits by virtue of the original Decree and also because South St. Paul paid additional money to PERA to allow PRA to be merged or morphed into PERA.

Please forward your written response.

Yours truly,



Edmund C. Meisinger

ECM\tjc

c: Ms. Cheryl Kinney
Ms. Mary Most Vanek

STATE OF MINNESOTA
COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT
HASTINGS, MINNESOTA 55033

In Re: CRAIG R KINNEY
vs. CHERYL J KINNEY
Case Number: 19-F7-92-009079

EDMUND C MEISINGER JR
60 E MARIE SUITE 109
W ST PAUL MN 55118

NOTICE OF FILING OF ORDER

You are hereby notified on July 27, 2006 a
ORDER /

SKL

was filed in the above entitled matter.

A true and correct copy of this notice has been served by mail upon the parties named herein at the last known address of each, pursuant to the Minnesota Rules of Civil Procedure.

Van A. Brostrom, Court Administrator

By

Susan Lawrence

Deputy

Dated: July 27, 2006

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Court File No. F7-92-9079

In re the marriage of:

Craig R. Kinney,
Petitioner,

and

Cheryl J. Kinney,
Respondent.

ORDER

The above matter came before the Court on July 17, 2006 upon both parties' motions for amended findings.

Anne O'Reilly, Esq., appeared on behalf of Petitioner. Respondent appeared personally and with Edmund Meisinger, Esq.

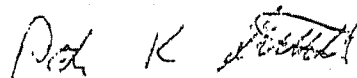
Based upon the arguments of counsel, and the file, the Court makes the following:

ORDER

1. Petitioner's motion for amended findings is denied.
2. Respondent's motion for amended findings is denied.

Dated: July 27, 2006.

BY THE COURT



Patrice K Sutherland
Judge of District Court

FILED DAKOTA COUNTY
VAN A. BROSTROM Court Administrator

JUL 27 2006
160

MEMO

The Court has no jurisdiction to direct PERA to negotiate with Respondent and undo Petitioner's selection of a single-life benefit. The representative of PERA has stated in his affidavit that this election is irrevocable.

The Court realizes the rapid repayment of arrearages causes a hardship to Petitioner. However, Petitioner's health has deteriorated, and there are limited opportunities for Respondent to recoup the monies owed to her.

PKS

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

In Re the Marriage of:

Craig R. Kinney,

Petitioner,

and

Cheryl J. Kinney,

Respondent.

Court File No. F7-92-9079
Case Type: Family Law

**AFFIDAVIT OF
LANCE LAFROMBOIS**

STATE OF MINNESOTA)
COUNTY OF RAMSEY)ss.
)

LANCE LAFROMBOIS, being first duly sworn, deposes and states that:

1. My name is Lance LaFrombois and I work for the Pension Services Division of the Public Employee's Retirement Association (PERA).
2. I have reviewed our documents in this matter regarding PERA plan participant Craig Kinney, PERA Member No. 820382.
3. Mr. Kinney retired effective June 1, 1999 and began receiving PERA pension benefits at that time. Prior to his retirement, Mr. Kinney selected a single-life benefit effective June 1, 1999. Accordingly, Mr. Kinney's PERA pension benefits have been calculated based upon a single-life benefit, as opposed to a survivor benefit option.
4. Mr. Kinney cannot now elect a survivor benefit option. The time for election was prior to his retirement in June 1999 and cannot now be change. Upon retirement, Mr. Kinney's election of a single-life option became irrevocable.

5. Accordingly, PERA cannot convert Mr. Kimney's single-life benefit to a survivor benefit.

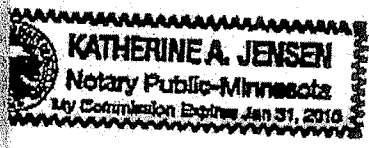
FURTHER YOUR AFFIANT SAYETH NOT.

Dated: June 26, 2006

[Signature]
Lance LaFrombois

Subscribed and sworn to before me
this 26th day of June, 2006.

[Signature]
Katherine Jensen
Notary Public



STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

In Re the Marriage of:

Court File No. F7-92-9079

Craig R. Kinney,

Petitioner,

and

FINDINGS OF FACT, CONCLUSIONS
OF LAW, ORDER FOR JUDGMENT AND
JUDGMENT

Cheryl J. Kinney,

Respondent.

The above entitled matter came on for Hearing before the Honorable Patrice K. Sutherland, Judge of District Court, on the 12th day of January, 2006 at the Dakota County Judicial Center, 1560 Highway 55, Hastings, Minnesota.

The Petitioner appeared and was represented by Ann O'Reilly, Esq., and the Respondent appeared and was represented by Edmund C. Meisinger, Esq. Upon all the files, records and proceedings and upon the supplemental information supplied to the Court pursuant to the Court's directive, the Court makes the following:

FINDINGS OF FACT

1. That the Petitioner was the South St. Paul Chief of Police at the time of the dissolution in August of 1993 and at his retirement in 1999.

2. That the Petitioner's retirement was in the South St. Paul City Police Retirement Association (PRA) which provided a

STATE OF MINNESOTA, COUNTY OF DAKOTA
Certified to be a true and correct copy of the original
on file and of record in my office this 15th
day of May, 2006

-1-

FILED DAKOTA COUNTY
VAN A. BROSTROM, Court Administrator

VAN A. BROSTROM, COURT ADMINISTRATOR

BY Martha M. Thorsrud

MAY 11 2006

retirement benefit of 50% of his salary and increased annually as the Chief of Police's salary increased.

3. That PRA did not permit the Respondent's marital portion of the Petitioner's PRA to be separated into a separate account upon retirement and the Petitioner was required to make payments to the Respondent.

4. That the Decree was amended in 1994 and again in 1996.

5. That the Respondent was awarded 50% of the marital benefits the Petitioner would receive from PRA and that amount was determined by a formula wherein the numerator was 26.83 and the denominator would be the number of years in which the Petitioner accumulated benefits.

6. That in 1997, PRA merged into Minnesota PERA and subsequently PRA no longer existed.

7. That the merger into PERA was not disclosed to the Respondent by PRA, PERA or by the Petitioner in 1997 or in 1999 but was discovered by the Respondent in late 2005 when inquiring about her own retirement through PERA.

8. That the Petitioner retired on June 1, 1999 and the marital portion was determined to be 50% of 26.83 (marital years in the retirement) divided ^{by (plus)} 32.75 (total years in the retirement plan) which resulted in a 59.04% retained by the Petitioner and 40.96% due the Respondent but Petitioner paid the Respondent an amount based on what would have been his retirement under PRA not what his actual retirement was under PERA.

9. That at the time of the Petitioner's retirement, the Petitioner selected single annuitant payments from PERA and no amount was set aside for the Respondent.

10. That PERA was unaware of any interest that Respondent had in the Petitioner's PERA benefits.

11. That the merger into PERA resulted in a substantial increase in benefits to the Petitioner which were not due to a increase in his job responsibility or a new position but were simply the result of longevity and the merger into PERA.

12. That the benefits to the Petitioner under PRA and under PERA are shown on the attached Table I and show the significant increase of \$173,997 between the two plans.

13. That under either PRA or PERA, upon Petitioner's death, the Respondent will not receive any benefits.

14. That under either PRA or PERA, upon Respondent's death, the full amount would be retained by the Petitioner.

15. That the Petitioner already has by separate QDRO, his portion of the Respondent's PERA retirement segregated.

16. That the merger into PERA was not expected by either party in 1993 and after extensive negotiations, the parties agreed to divide the marital interest in the Petitioner's marital pension pursuant to the formula outlined in paragraph 8 above. Pursuant to the parties agreement, the Respondent was to receive a percentage of the retirement benefit. The parties were free to

negotiate alternative methods of allocation of the marital interest in the pension. By the clear terms of the parties Stipulation, the Respondent was to receive 40.96% of the benefits.

17. That equity dictates that each should bear proportionately in any benefit (increase) or also bear proportionately any detriment (decrease). Accordingly, the Respondent should have received 40.96% of the benefits paid by PERA to the Petitioner after June 1, 1999.

18. That attached Table II shows the arrearage of \$88,147 due to the Respondent from Petitioner under PERA (to the end of 2005).

19. That the amount due to the Respondent for February, March, April and May of 2006 (\$2,524.28 monthly) is \$10,097.12 crediting the Petitioner with the \$2,524 paid in January by PERA.

20. That the 2006 retirement payments should be brought current.

21. That security should be provided for the arrearage from 1999 to the end of 2005.

22. That pursuant to the existing Court Order, the Petitioner is prohibited from transferring or disposing of his assets particularly his homestead.

CONCLUSIONS OF LAW

1. That the Petitioner shall immediately pay 40.96% of the benefits he receives from PERA directly to the Respondent until PERA starts paying the Respondent directly.

2. That the Petitioner shall immediately bring the 2006 payments current which total \$10,097.12.

3. That the Petitioner shall pay the sum of \$88,147 to the Respondent within 30 days after the entry of this Order.

4. That PERA shall pay 40.96% of the Petitioner's benefits directly to the Respondent each month.

5. In the event that the Petitioner fails to pay the sum of \$88,147 within 30 days of the entry of this Order, PERA shall pay an additional \$ 2,000.00 per month directly to the Respondent.

Furthermore, the Petitioner shall provide security for said payment to the Respondent by either:

a. Obtaining a Life Insurance Policy in the amount of \$88,147 naming the Respondent as beneficiary. Said Insurance Policy may be decreased in \$10,000 increments as payment is made; or

b. By providing to the Respondent a Note and Mortgage upon his homestead securing the debt in the amount of \$88,147.

6. In the event that the \$88,147 is not paid to the Respondent within 30 days after entry of this Order, any such indebtedness shall accrue interest at the then current judgment rate which is presently 4%.

7. That in the event that PERA determines that a Qualified

Domestic Relations Order is needed to accomplish payments to the Respondent, the Respondent's Attorney shall draft an appropriate QDRO and forward it to the Court.

8. That no Attorney's fees are awarded to either party.

ORDER FOR JUDGMENT

LET JUDGMENT BE ENTERED ACCORDINGLY

Dated: May 10, 2006

BY THE COURT:

Pat Sutherland

PATRICE SUTHERLAND

JUDGMENT

The above Conclusions of Law hereby constitutes the Judgment of this Court.

VAN A BROSTROM
COURT ADMINISTRATOR

Dated: May 11 2006

By: Martha M. Nygaard

MEMO

The PRA merger into PERA was a windfall and not earned by the Petitioner from any new job assignment or promotion.

This windfall was not known to either party at the time of the dissolution in 1993 and was not disclosed in 1997 at the time of the merger or disclosed in 1999 at the time of Petitioner's retirement.

Any of these occasions would have allowed the Respondent's portion of the retirement to have been separated which was not allowed under PRA but permitted under PERA.

The Petitioner unilaterally selected a single annuitant payment option at PERA leaving the Respondent with no payment in the event of the Petitioner's death. This is inequitable and unfairly detrimental to the Respondent.

Since the gain (or a loss) was not bargained for or expected by either party at the time of the dissolution, equity dictates a gain (or a loss) should fall proportionately on both parties in the absence of any controlling case law or statute.

This decision is considered as an interpretation of the Decree(s) rather than a modification consistent with Zickefoose vs. Murteau, 399 NW 2nd, 178 (1987).

TABLE I

Petitioner's Retirement
Benefits under PRA

Petitioner's Retirement
Benefits under PERA

* 1999	\$ 18,404.00	\$ 34,555.00
2000	\$ 35,808.00	\$ 59,787.00
2001	\$ 38,648.00	\$ 65,487.00
2002	\$ 41,000.00	\$ 68,430.00
2003	\$ 42,315.00	\$ 68,940.00
2004	\$ 44,614.00	\$ 70,390.00
**2005	\$ <u>45,953.00</u>	\$ <u>72,150.00</u>
TOTAL	\$ 265,742.00	\$ 439,739.00

INCREASE IS \$173,997.00

* 7 months of payments

** \$2,463 paid by PERA to Respondent in December of 2005

TABLE II

YEAR	PET'S PERA BENEFITS (from Table I)	40.96% DUE RESPONDENT	PETITIONER PAID RESPONDENT	PERA PAID RESPONDENT
1999	\$34,555.00	\$14,154.00	\$7,514.00	
2000	\$59,787.00	\$24,489.00	\$12,731.00	
2001	\$65,487.00	\$26,819.00	\$12,731.00	
2002	\$68,430.00	\$28,029.00	\$14,039.00	
2003	\$68,940.00	\$28,238.00	\$14,142.00	
2004	\$70,390.00	\$28,831.00	\$14,789.00	
2005	\$72,150.00*	\$29,553.00	\$13,557.00	\$2,463.00
TOTAL	\$439,739.00	\$180,113.00	\$89,503.00	\$2,463.00

* increased to reflect \$2,463.00 payment to the Respondent from PERA in December of 2005.

Amount due to Respondent	\$180,113.00	
Less credits	- \$ 91,966.00	(\$89,503 + \$2,463)
Balance due to Respondent	\$ 88,147.00	

952-548-9507

March 24, 2006

The Honorable Patrice Sutherland
Judge of District Court
Dakota County Judicial Center
1560 Highway 55
Hastings, MN 55033

Re: Kinney and Kinney
Court File No. F7-92-9079

Dear Judge Sutherland:

In accordance with your Order dated March 3, 2006, enclosed is a copy of PERA's response containing the information you requested. The PERA response is dated March 10, 2006 but Cheryl Kinney did not receive it until March 23, 2006 by FAX. *after she called*

Cheryl Kinney is not retired and will probably work additional years. We asked PERA to supply information as of May 31, 2006 (see section 2 of page 4).

Cheryl's retirement benefits would be \$381 and an additional \$83 for a total of \$464. Cheryl has not selected the survivor annuity option but Craig did when he filed the Dissolution Decree with PERA in Cheryl's file. Craig would receive \$82 a month. Presumably, that \$82 would have been Cheryl's if she had the entire pension so there is very likely an additional \$82 to be added to the \$464 to determine the amount without a survivor benefit.

If Craig dies, Cheryl cannot live on her PERA. Craig did not select any survivor benefits.

In reviewing PERA's letter to Mr. Kinney dated March 15, 2006, it indicates that an 100% survivor benefit option would reduce Craig's monthly amount received to \$5,185.38 from the amount he receives now which is \$6,162.79 (see the December 29, 2005 letter

from PERA). This means that to provide 100% survivor benefit option for Cheryl, Craig would still receive a reduced pension of over \$61,000 a year. That \$61,000 a year is far in excess of the PRA pension amount he would have received as a retired Chief of Police.

Craig receives a substantial benefit from transferring to PERA and no benefit apparently belongs to Cheryl according to Craig's view.

One factor that has not been considered is that PERA did not accept this additional obligation from the City of South St. Paul Police Department without some additional money being paid to PERA to cover PERA's additional obligation provided by the South St. Paul Finance Director. Additionally, PERA may be able to provide what additional funds were provided at the time of the transfer and are probably still being paid.

In Ann O'Reilly's letter dated March 21, 2006 to you, Ms. O'Reilly continues to distort the amount of money that Cheryl Kinney was to receive. There is no reflection in her calculations for the increase due to the passage of time. Her conclusion that Cheryl is only entitled to \$32,601 as her remaining portion. This is, of course, inaccurate and should have been accomplished by a buy-out at the time of the dissolution which was not done.

Craig Kinney has not paid the February and March 2006 payments to Cheryl that he had been making. Upon our request for those payments, I received the enclosed letter dated March 9, 2006 from Ms. O'Reilly indicating that Cheryl brought the problem on herself. That simply is not so.

Cheryl went to PERA ^{in 11/05} to find out what her pension amount would be if she retired. At that point, PERA knew about the dissolution in Cheryl's file and reviewed the dissolution that ~~Craig had supplied~~. Then PERA (on its own) reviewed Craig's file and determined independently to make payments to Cheryl. There was no demand by Cheryl and it was not a blatant attempt to evade the language of the Amended Decree and "misdirect" PERA as claimed by Ms. O'Reilly.

By the time this is reviewed, Craig will have missed the April payment also and therefore, we reiterate the need for a receiver to handle his funds and a guarantee payment of whatever obligations the Court determines are due.

Under the Dissolution Decree, Craig bargained for 58% and Cheryl 42%.

Accepting Craig's view results in Craig receiving about \$73,950 per year (12 x \$6,162.79) less the \$14,500 (roughly) he wants to pay Cheryl. If Cheryl dies, Craig gets the full \$73,950.

When Cheryl retires under Craig's view, Cheryl receives the \$14,500 and her PERA of \$5,568 (12 x \$464) for a total of \$20,000 approximately. However, when Craig dies Cheryl only receives \$5,568. Is this equitable?

Had Craig disclosed the transfer to PERA before he unilaterally selected the full pension (no survivor rights), Cheryl could have her share and then have an additional benefit from Craig's PERA if Craig dies.

Yours truly,

Edmund C. Meisinger

ECM\tjc

c: Ms. Cheryl Kinney
Ms. Ann O'Reilly

Public Employees Retirement Association of Minnesota
 60 Empire Drive, Suite 200
 Saint Paul, Minnesota 55103-2088
 Member Information Services: 651-296-7460 or 1-800-652-9026
 Employer Response Lines: 651-296-3636 or 1-888-892-7372
 PERA Fax Number: 651-297-2547
 PERA Website: www.mnpera.org

PERA

PERA Member No:

March 10, 2006

MR CRAIG R KINNEY
 7211 BRITTANY LN
 INVER GROVE HTS MN 55076-2325

Dear Mr. Kinney:

In response to your request, our records show that you selected the single-life benefit option effective June 1, 1999. By selecting this option, the portion payable to your former spouse, Cheryl Kinney, is payable to her for your lifetime and cease upon your death. If she should die before you, her portion will revert to you. In addition, no monthly payment would be made to anyone after your death, but a refund on your share of the balance, if any, would be paid to your beneficiary.

Had the court required you to select one of the survivor benefit options to provide a survivor benefit for Cheryl, your monthly benefit would have been as follows:

Survivor Benefit Option	Monthly Amount Payable to Member
25 Percent	\$5,885.47
50 Percent	\$5,632.18
75 Percent	\$5,399.23
100 Percent	\$5,185.38

A survivor option would have provided a monthly benefit to Cheryl after your death but would have reduced the single-life benefit paid to you based on the option selected at retirement.

If we can be of any further service, please let us know.

Craig's 2006 monthly benefit = \$6,162.79

Sincerely,

50% option

Pension Services Division

\$6,162.79
 - \$ 530.61

\$5,632.18

PS/amc

Public Employees Retirement Association of Minnesota
60 Empire Drive, Suite 200
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PERA Website: www.mnpera.org



January 11, 2006

Member No.

MS CHERYL J KINNEY
2501 LOCKWOOD DR
ST PAUL MN 55120

Dear Ms. Kinney:

On January 10, 2006, a Second Amended Judgment and Decree was given to our office. The order states that our member shall be responsible for directly paying you your marital portion of the pension benefits; therefore, we are discontinuing payments to you effective immediately. If you would like PERA to pay directly to you, you will be required to get an amended order.

If you have any questions, you may contact me directly at (651) 355-0029.

Sincerely,

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

A handwritten signature in black ink, appearing to read 'Kay A. Jensen'. The signature is written in a cursive style and is positioned above the typed name and title.

Kay A. Jensen
Retirement Services Coordinator

PS/kj

1.1 moves to amend H.F. No. 2725; S.F. No. 2467, as follows:

1.2 Page 2, line 12, delete "and" and insert "or"

- 1.1 moves to amend H.F. No. 2725; S.F. No. 2467, as follows:
- 1.2 Page 2, lines 5 and 17, delete "50" and insert "..."

1.1 moves to amend H.F. No. 2725; S.F. No. 2467, as follows:

1.2 Page 2, after line 27, insert:

1.3 "Subd. 5. Referral for administrative hearing. (a) If the eligible person under
1.4 subdivision 2 agrees in writing to cover all costs associated with an administrative hearing,
1.5 the executive director shall contact the Office of Administrative Hearings.

1.6 (b) This section is effective as stated in subdivision 3 if all other requirements stated
1.7 in this section are met, including receipt by the executive director of the Public Employees
1.8 Retirement Association of the payment to cover the administrative hearing cost, if the
1.9 hearing examiner concludes that:

1.10 (1) the Public Employees Retirement Association had a legal obligation to keep the
1.11 eligible divorced spouse under subdivision 2 informed about the consolidation of the South
1.12 St. Paul Police Relief Association into the Public Employees Retirement Association in
1.13 1997, and the resulting benefit options available to consolidation account members;

1.14 (2) the Public Employees Retirement Association failed in fulfilling obligations
1.15 under clause (1); and

1.16 (3) that the applicable court is likely to have mandated that the applicable
1.17 consolidation account member must elect a joint and survivor annuity naming his divorced
1.18 spouse as the beneficiary in the event of his death, if a request for action had been brought
1.19 to the court before the election of an annuity form."

This Document can be made available
in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE NO. 2725

February 12, 2008

Authored by Hansen

The bill was read for the first time and referred to the Committee on Governmental Operations, Reform, Technology and Elections

A bill for an act

relating to retirement; Public Employees Retirement Association police and fire fund; authorizing a joint and survivor annuity for a divorced spouse of a deceased retiree who elected a single life annuity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **PERA-P&F; JOINT AND SURVIVOR ANNUITY FOR SURVIVING SPOUSE.**

Subdivision 1. Purpose. The annuity provided by this section is intended to compensate for harm caused by the Public Employees Retirement Association, by its failure to provide an eligible person with information about the benefit options available to the eligible person's divorced spouse following a consolidation.

Subd. 2. Eligibility. (a) Notwithstanding the election of a single life annuity, prohibitions against revising an annuity form, and the death of the retiree, a person specified in paragraph (b) is authorized to receive a joint and survivor annuity as specified in subdivision 3 upon satisfying the requirements specified in subdivision 4.

(b) An eligible person is the surviving divorced spouse of a person who:

(1) was born on March 27, 1942;

(2) was employed by the South St. Paul Police Department beginning in 1966, with coverage by the South St. Paul Police Relief Association plan;

(3) was an active member of that relief association when the association was consolidated into the Public Employees Retirement Association police and fire plan;

(4) became divorced in 1993;

2.1 (5) retired in 1999 under the provisions of the Public Employees Retirement
2.2 Association police and fire plan, having elected a single life annuity rather than a joint
2.3 and survivor annuity; and

2.4 (6) died on September 9, 2006.

2.5 Subd. 3. **Annuity.** (a) The annuity is the second half of a 50 percent joint and
2.6 survivor annuity computed as if the deceased Public Employees Retirement Association
2.7 police and fire plan retiree had elected this annuity rather than a single life annuity and had
2.8 named the eligible person under subdivision 2 as the beneficiary. The monthly annuity
2.9 payments must reflect all applicable postretirement adjustments that would have occurred
2.10 since the deceased began drawing a retirement annuity in 1999. The annuity is prospective
2.11 only and commences on the first day of the month following the effective date of this
2.12 section, and upon making the repayment under paragraph (b), whichever is later.

2.13 (b) To be eligible for the annuity under paragraph (a), the eligible person under
2.14 subdivision 2 must pay to the executive director of the Public Employees Retirement
2.15 Association the sum of the monthly differential between the single life annuity amounts
2.16 paid to the deceased and the payments the deceased would have received if the deceased
2.17 had elected a 50 percent joint and survivor annuity, naming the divorced spouse of the
2.18 deceased as the beneficiary. This amount is payable in a lump sum with compound interest
2.19 at a monthly rate of 0.71 percent from the date each payment was made to the deceased
2.20 until the end of the month in which the lump sum payment under this paragraph is made.
2.21 Payment of this lump sum must occur before July 1, 2008.

2.22 Subd. 4. **Annuity application.** An eligible person described in subdivision 2 shall
2.23 apply in writing on forms provided by the executive director of the Public Employees
2.24 Retirement Association for the annuity provided by this section. The application must
2.25 be made before July 1, 2008, and must include all necessary documentation of the
2.26 applicability of this section and any other relevant information which the executive
2.27 director may require.

2.28 **EFFECTIVE DATE.** This section is effective the day following final enactment.