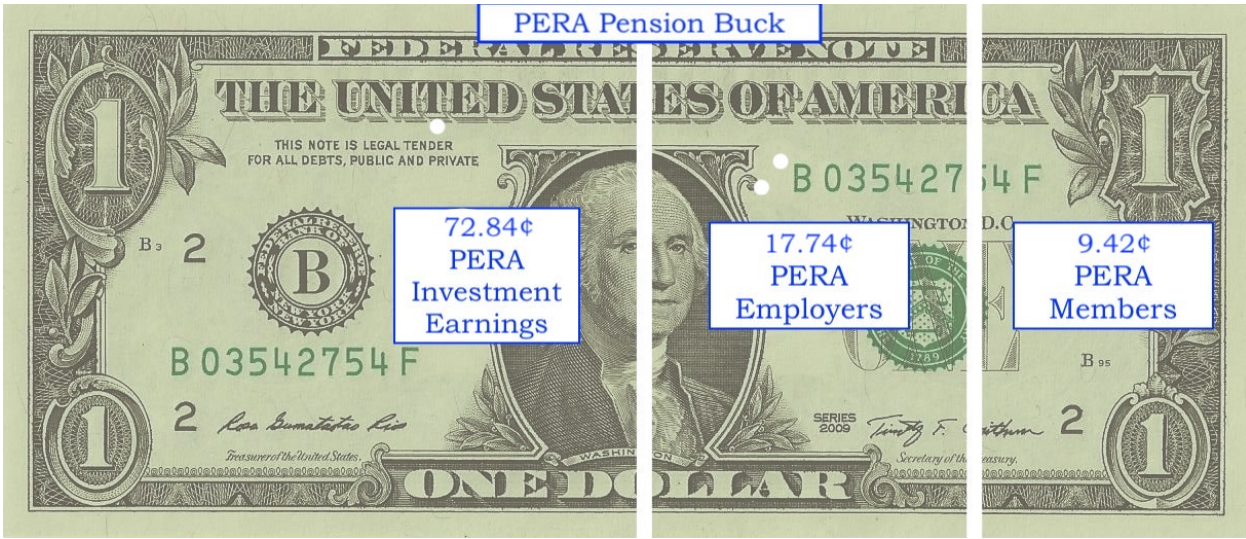


How to correctly value the community property interest in a public retirement plan such as the Public Employees Retirement Association of New Mexico

Often clients wish to consider offsetting the community property interest in a PERA pension against another marital asset such as the equity in a home or former spouse’s 401(k) plan. While this approach may not always be appropriate due to the access of liquidity or economic/actuarial assumptions, should the parties wish to proceed in valuing a public retirement plan for purposes of offset or buyout, it is extremely important you obtain an actuarial present value calculation from a qualified expert.

PERA is a defined benefit plan, governed by the Public Employees Retirement Act, NMSA 1978, Section 10-11-1, et seq. and is considered a contributory defined benefit plan, meaning members are required to pay a portion of their income each year into the retirement system. However, this represents only a small portion of the total amount required to fund a member’s future pension obligation. On average for every \$1 PERA pays out funding comes from the following three sources: member contributions (approx. 9%) + employer contributions (approx. 18%) + investment earnings (approx. 73%) equals the total value of the pension as illustrated below.



(PERA State General Plan 3)

The majority of a member’s pension is funded by their employer and future investment earnings, and not by the member directly. This fact is noted in the member booklets and Annual Member Statement issued by the retirement system. The amount a PERA member is required to pay into the retirement system (which can be as high as 18.15% of their pay) depends on the membership classification.

Coverage Plan	Employee Contribution Percentage		Employer Contribution Percentage
	Annual Salary \$25,000 or less	Annual Salary greater than \$25,000	
State Plan 3	7.42%	9.42%	17.74%

(Illustration from www.nmpera.org)

As these two illustrations show, member contributions clearly only cover a small portion of the overall funding requirements.

Example: Assume a PERA State General Plan 3 member is retiring at 55 with 25 years of service, final average salary of \$3,500 per month and \$80,000 in their member contribution account. The member will receive a lifetime benefit of \$2,625 per month ($25 \times \$3,500 \times .03 = \$2,625$), plus cost-of-living-adjustments. The actuarial present value of this income stream is approximately \$750,000, not the \$80,000 in contributions and interest found on the Annual Member Statement. It would take only 2.54 years of receiving \$2,625 per month to fully deplete the \$80k member contribution account (excluding interest), and yet the benefit continues for the member's lifetime.

Practice Tip: Many judgments erroneously rely on only the member contributions and interest (which is approximately 6%-18% of the total value) instead of the full actuarial value of the public retirement plan. Such errors in disclosing the full value of the pension can result in an inequitable division of community property, often times leading to an omitted asset, setting aside the Judgment or requiring a recalculation of spousal support.

While “best practice” means relying on actuarial value to determine the full value of a member’s public retirement system benefit, this does not mean the family law attorney is required to value the pension for purposes of buyout or offset. On the contrary, if the parties prefer to divide the community property interest equally by Domestic Relations Order (DRO), then no actuarial valuation is required. HOWEVER, the parties must understand that even with a properly prepared DRO in place, in almost all cases the election of a lump sum from the retirement system will provide only a fraction of the value of every dollar payable with respect to the total accrued benefit.

Practice Tip: The member and nonmember must leave their share of the member contributions and interest on deposit with the retirement system in order to receive a monthly benefit equal to the full actuarial value of the pension (provided that the member is vested).

While calculating the actuarial value of a member's pension for purposes of a complete buyout may be inappropriate in some circumstances, obtaining an actuarial valuation from a qualified expert may still prove extremely useful to the family law attorney and client.

Examples: (a) What if the clients have agreed for the nonmember to retain the family home and wish to partially offset the nonmember's interest in the PERA pension against the equity in the home? It is possible to award the nonmember less than 50% of the community property interest in a Domestic Relations Order (e.g. 43.50% of community), whereby the 6.5% reduction is actuarially equivalent to one-half of the equity in the family home.

(b) Perhaps the parties have been separated for a long time and member has been collecting their pension without paying a portion to the nonmember? It is possible to actuarially value the prospective pension and increase the nonmember's percentage share as reimbursement for past pension payments in arrears.

Regardless of whether the parties are entertaining the idea of a complete buyout or partial offset of the nonmember's community property interest in a public retirement plan, obtaining an actuarial valuation is a quick and cost effective way to ensure all parties understand the true value of what is commonly the most valuable asset in a divorce.

Moon, Schwartz & Madden have been qualified as experts in California in the actuarial valuation and division of retirement plans, including survivor benefits, since 1993 and now offers these services in New Mexico and Arizona. We are members of the "QDRONES" which is a national educational society of lawyers, actuarial consultants, and other QDRO professionals. www.msmqdros.com

*The following is a sample valuation report from
Moon, Schwartz & Madden*

Moon, Schwartz & Madden

QDRO and Valuation Consultants

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June 14, 2021

Ms. Jane Attorney, Esq.
(via email only)

Re: Marriage of Smith

Dear Ms. Attorney:

I have evaluated the Public Employees Retirement Association of New Mexico (PERA) pension benefits for Mr. Smith as you requested.

Valuation of Benefits

In my opinion, the actuarial present value of the benefits accrued as of 6/14/2021 (the date of the pension estimate provided), is \$750,000¹. The community share proportion is .6000, which makes the community share worth \$450,234 and the former spouse's share worth \$225,117.

The community share was estimated based on 15.00 years of full-time service credit accrued between the date of marriage and date of divorce, divided by a total of 25.00 years of service credit accrued as of 6/14/2021.

Statistical Information and Valuation Assumptions

For purposes of my report, I assumed no Additional Retirement Service Credit ("air-time"), redeposits for previously withdrawn contributions, military service or service prior to membership occurred within the account. If this is incorrect, please let me know immediately so that I may update my report as necessary.

The amount of the pension benefit accrued as of 6/14/2021 was from the State General Plan 3 (Tier 1) formula in the plan booklet, based on salary information you provided. The current average salary is \$3,500 per month.

¹ All values stated in this report are pre-tax except as noted otherwise.

The valuation and community share proportion therein were based on the following:

Date of Birth:	06/14/1966
Date of Hire:	6/14/1996
Date of Marriage:	06/14/2006
Date of Divorce:	Pending
Date of Accrual:	06/14/2021
Date of Valuation:	06/14/2021
Benefit Payable:	\$2,625 per month @ 55
Pre-retirement growth:	None
Cost-of-Living:	2.00% (compounded)
Mortality Table:	RP-2014 mortality (male), projected to 2021 using Mortality Improvement Scale MP-2020 ²
Discount Rate:	Segment Rates (IRC 417(e)(3)) ³ Tier 1 = 0.67%, Tier 2 = 2.84%, Tier 3 = 3.47%

The values stated within this report represent the estimated actuarial present value of the monthly benefit and does not represent an actual lump sum amount payable by the plan.

The values given above are for the defined benefit pension plan only, and do not include the value of benefits expected from participation in any other plan.

Feel free to call me if you have any questions and thank you for the opportunity to be of service.

Sincerely,

John C. Madden

John C. Madden

Legal Disclaimer: The information provided in this report is provided for general information and educational purposes only, and is not intended to be, does not constitute, and should not be relied upon as legal advice. Moon, Schwartz & Madden ("MSM") does not provide legal advice and our services cannot and should not be relied upon as legal advice.

² Based on 26 CFR 1.430(h)(3)-1 - Mortality tables used to determine present value, and "Actuarial Standard of Practice No. 34" from the Actuarial Standards Board.

³ Due to the severe drop in interest rates the present value of pension benefits, which has an inverse relationship to interest rates, has increased.

MOON, SCHWARTZ & MADDEN

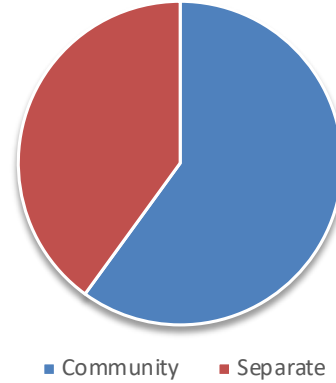
Summary Table

Participant: Mr. Smith
 Plan Name: PERA (State General Plan 3)
 Participant DOB: 6/14/66
 Gender: Male
 Mortality Table: RP-2014 (Healthy)
 Mortality Improvement Scale: MP-2020
 COLA: 2.00%
 Valuation Date: 6/14/21

Community Percentage: 60.000%

Total Value: \$750,390
 Separate Property Value: \$300,156
 Community Value: \$450,234
 One-half Community Value: \$225,117

Characterization



Characterization as of: 6/14/21

Year	Age	Annual Benefit	Probability of Survival	Actuarial Present Value	Year	Age	Annual Benefit	Probability of Survival	Actuarial Present Value
2021	55-56	\$31,553	0.998	\$31,375	2054	88-89	\$60,651	0.359	\$6,818
2022	56-57	\$32,184	0.994	\$31,663	2055	89-90	\$61,864	0.320	\$5,979
2023	57-58	\$32,827	0.990	\$31,937	2056	90-91	\$63,102	0.281	\$5,176
2024	58-59	\$33,484	0.985	\$32,196	2057	91-92	\$64,364	0.243	\$4,417
2025	59-60	\$34,153	0.979	\$32,438	2058	92-93	\$65,651	0.208	\$3,715
2026	60-61	\$34,837	0.973	\$29,251	2059	93-94	\$66,964	0.175	\$3,077
2027	61-62	\$35,533	0.966	\$28,519	2060	94-95	\$68,303	0.145	\$2,510
2028	62-63	\$36,244	0.959	\$28,058	2061	95-96	\$69,669	0.118	\$2,016
2029	63-64	\$36,969	0.951	\$27,582	2062	96-97	\$71,063	0.095	\$1,594
2030	64-65	\$37,708	0.942	\$27,089	2063	97-98	\$72,484	0.075	\$1,241
2031	65-66	\$38,462	0.932	\$26,579	2064	98-99	\$73,933	0.058	\$950
2032	66-67	\$39,232	0.921	\$26,051	2065	99-100	\$75,412	0.044	\$715
2033	67-68	\$40,016	0.910	\$25,504	2066	100-101	\$76,920	0.033	\$529
2034	68-69	\$40,817	0.897	\$24,938	2067	101-102	\$78,459	0.025	\$385
2035	69-70	\$41,633	0.883	\$24,350	2068	102-103	\$80,028	0.018	\$276
2036	70-71	\$42,466	0.869	\$23,739	2069	103-104	\$81,629	0.013	\$194
2037	71-72	\$43,315	0.853	\$23,106	2070	104-105	\$83,261	0.009	\$135
2038	72-73	\$44,181	0.836	\$22,451	2071	105-106	\$84,926	0.006	\$92
2039	73-74	\$45,065	0.817	\$21,772	2072	106-107	\$86,625	0.004	\$62
2040	74-75	\$45,966	0.798	\$21,068	2073	107-108	\$88,357	0.003	\$41
2041	75-76	\$46,885	0.777	\$18,287	2074	108-109	\$90,125	0.002	\$27
2042	76-77	\$47,823	0.754	\$17,101	2075	109-110	\$91,927	0.001	\$17
2043	77-78	\$48,780	0.730	\$16,311	2076	110-111	\$93,766	0.001	\$11
2044	78-79	\$49,755	0.704	\$15,504	2077	111-112	\$95,641	0.001	\$7
2045	79-80	\$50,750	0.677	\$14,681	2078	112-113	\$97,554	0.000	\$4
2046	80-81	\$51,765	0.648	\$13,841	2079	113-114	\$99,505	0.000	\$3
2047	81-82	\$52,801	0.617	\$12,985	2080	114-115	\$101,495	0.000	\$2
2048	82-83	\$53,857	0.584	\$12,115	2081	115-116	\$103,525	0.000	\$1
2049	83-84	\$54,934	0.550	\$11,234	2082	116-117	\$105,595	0.000	\$1
2050	84-85	\$56,032	0.514	\$10,345	2083	117-118	\$107,707	0.000	\$0
2051	85-86	\$57,153	0.476	\$9,453	2084	118-119	\$109,861	0.000	\$0
2052	86-87	\$58,296	0.438	\$8,563	2085	119-120	\$112,058	0.000	\$0
2053	87-88	\$59,462	0.399	\$7,682					

* MSM does not provide financial, legal or tax advice and our valuations are based on our understanding of valuation principals and plan provisions. The simplified summary table provided above is for illustration purposes only and does not reflect the complete actuarial present value of the monthly benefits.

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CURRICULUM VITAE FOR JOHN C. MADDEN

EDUCATION

- BA in Finance/Real Estate, Temple University, Philadelphia, 1994

STOCK OPTIONS AND FINANCE EXPERIENCE

- Held Series 7 & 63 Licenses.
- Stock, Bond and Mutual Fund sales 1994
- Interest calculations/Mortgage refinancing 1994-1995
- Stock Option valuations since 1995
- Professional market maker in stock options, Philadelphia/Pacific Stock Exchange '95-99

CONSULTING EXPERIENCE

- Partner with Moon, Schwartz & Madden since 2004, Associate 1999-2003
- QDRO and Pension Valuation preparation since 1999.
- Stock option apportionment since 2000.
- Qualified as an expert witness in actuarial pension valuations, stock options and (Q)DROs in the Superior Courts of Alameda, El Dorado, Marin, Sacramento, Santa Clara, San Mateo, Sutter, Placer and Contra Costa counties.
- Executive Committee Member of “QDRONES”, an organization of attorneys and valuation experts who specialize in issues related to the division of retirement benefits.
- Founding member of **QDRO Counsel™**, a legal services company providing online preparation of QDROs and valuation reports.
- Member of the American Academy of Economic and Financial Experts (AAEFE)

MCLE SPEAKING ENGAGEMENTS

American Academy of Matrimonial Lawyers (AAML) Symposium
The Rutter Group, Retirement Plan Seminar
Association of Certified Family Law Specialists (ACFLS)
Continuing Education of the Bar – California (CEB)
Collaborative Practice California Annual Conference
Financial Planning Association of Northern California
Sacramento Collaborative Practice Group/Bar Association
Southern California Mediation Association (SCMA), Family Mediation Institute Alameda County
Contra Costa County
Fresno County
Marin County
Napa County
Orange County
Placer County
Sacramento County
San Francisco
San Joaquin County
San Mateo County
Stanislaus County
Santa Clara County
Solano County
Riverside County
North County San Diego