STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

ROBERT CHANEY, Petitioner, vs. STATE BOARD OF ADMINISTRATION, Respondent.	)	DOAH Case No. 24-0803 SBA Case No. 2023-0558

FINAL ORDER

On August 26, 2024, Administrative Law Judge Brandice D. Dickson (hereafter "ALJ") submitted her Recommended Order to the State Board of Administration (hereafter "SBA") in this proceeding. A copy of the Recommended Order indicates that copies were served upon the *pro se* Petitioner, Robert Chaney and upon counsel for the Respondent. Petitioner timely filed a document entitled "Affidavit of Petitioner, Robert Lee Chaney, and Petitioner's Exceptions to the Recommended Order." This document [hereafter referred to as "Petitioner's Document"] will be deemed as constituting the Petitioner's exceptions. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Chief, Defined Contribution Programs for final agency action.

STATEMENT OF THE ISSUE

The State Board of Administration adopts and incorporates in this Final Order the Statement of the Issue in the Recommended Order as if fully set forth herein.

PRELIMINARY STATEMENT

The State Board of Administration adopts and incorporates in this Final Order the Preliminary Statement in the Recommended Order as if fully set forth herein.

STANDARDS OF AGENCY REVIEW OF RECOMMENDED ORDERS

The findings of fact of an Administrative Law Judge ("ALJ") cannot be rejected or modified by a reviewing agency in its final order "...unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings were not based upon competent substantial evidence...." *See* Section 120.57(1)(l), Florida Statutes. *Accord, Dunham v. Highlands Cty. School Brd*, 652 So.2d 894 (Fla 2nd DCA 1995); *Dietz v. Florida Unemployment Appeals Comm*, 634 So.2d 272 (Fla. 4th DCA 1994); *Florida Dept. of Corrections v. Bradley*, 510 So.2d 1122 (Fla. 1st DCA 1987). A seminal case defining the "competent substantial evidence" standard is *De Groot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957), in which the Florida Supreme Court defined it as "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred" or such evidence as is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached."

An agency reviewing an ALJ's recommended order may not reweigh evidence, resolve conflicts therein, or judge the credibility of witnesses, as those are evidentiary matters within the province of administrative law judges as the triers of the facts. *Belleau v. Dept of Environmental Protection*, 695 So.2d 1305, 1307 (Fla. 1st DCA 1997); *Maynard v. Unemployment Appeals Comm.*, 609 So.2d 143, 145 (Fla. 4th DCA 1993). Thus, if the record discloses any competent substantial evidence supporting finding of fact in the ALJ's Recommended Order, the Final Order will be bound by such factual finding.

Pursuant to Section 120.57(1)(l), Florida Statutes, however, a reviewing agency has the general authority to "reject or modify [an administrative law judge's] conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction." Florida courts have consistently applied the "substantive jurisdiction limitation" to prohibit an agency from reviewing conclusions of law that are based upon the ALJ's application of legal concepts, such as collateral estoppel and hearsay, but not from reviewing conclusions of law containing the ALJ's interpretation of a statute or rule over which the Legislature has provided the agency with administrative authority. *See Deep Lagoon Boat Club, Ltd. v. Sheridan,* 784 So.2d 1140, 1141-42 (Fla. 2d DCA 2001); *Barfield v. Dep't of Health*, 805 So.2d 1008, 1011 (Fla. 1st DCA 2001). When rejecting or modifying any conclusion of law, the reviewing agency must state with particularity its reasons for the rejection or modification and further must make a finding that the substituted conclusion of law is as or more reasonable than that which was rejected or modified.

With respect to exceptions, Section 120.57(1)(k), Florida Statutes, provides that "...an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record."

RULINGS ON PEITIONER'S EXCEPTIONS TO THE RECOMMENDED ORDER

Introduction

The matter involved in the instant situation started when Respondent's Plan Administrator had received an administrative subpoena from Los Angeles County, California, requesting

Respondent to freeze Petitioner's FRS Investment Plan account. This subpoena apparently was issued pursuant to Title IV-D of the Federal Social Security Act that created the Child Support Enforcement Program ("CSE").

Before Petitioner's Exceptions are specifically addressed, it is helpful to look at the Child Support Enforcement Program ("CSE") that was enacted as a federal-state program designed to reduce public expenditures for cash payments to families by obtaining ongoing support from non-custodial parents to reimburse the states and federal government for part of that assistance. Recipients of cash assistance from the program are required to assign any collections made on their behalf to the appropriate state. The collections are split between the federal and state governments to reimburse them for cash assistance payments. [Section 451-469B of the Social Security Act (42 U.S.C. Sections 651-669b)]

Pages 1 through 7 of Petitioner's Document

Pages 1 through 7 of Petitioner's Document are not exceptions to the Recommended Order, but rather are an attempt by Petitioner to complain about the conduct of the ALJ and Los Angeles County, as well as to try to introduce additional testimony and/or to repeat prior testimony. As such, the allegations and arguments Petitioner has set forth on Pages 1 through 7 are not addressed here.

Petitioner's Exception 1: Objection to the Statement of the Issue.

Petitioner apparently is taking issue with the assertion in the Preliminary Statement that only one issue is involved in his case-namely, whether the Respondent's distribution from Petitioner's Florida Retirement System (FRS) Investment Plan account pursuant to a Qualified Domestic Relations Order was a valid distribution under Section 121.591, Florida Statutes.

[Petitioner's Document, page 8, Section 1. b) 2)]. However, Petitioner fails to indicate what other issues he feels should be set forth in the Preliminary Statement that the ALJ has jurisdiction to address, and the statutory sections related to those other issues. Petitioner also tries to bring in additional testimony that was not offered during the proceeding. As will be discussed further below, it is improper to try to supplement the record once the proceeding has been concluded.

Petitioner further tries to argue in this exception that the distribution made from his FRS Investment Plan account was invalid under Section 121.591, Florida Statutes. However, this argument goes directly to the Statement of the Issue which, of course, is whether the distribution complied with Section 121.591, Florida Statutes. So, it is unclear why Petitioner is objecting to the Statement of the Issue.

Petitioner's Exception 1 is not being made to a specific finding(s) of fact or conclusion(s) of law. Further, Exception 1 does not clearly identify the disputed portions of the Recommended Order by page number(s) or paragraph(s) and does not include appropriate and specific citations to the record. As such, it is not necessary to rule on Petitioner's Exception 1.

Based on the foregoing, Petitioner's Exception 1 hereby is rejected.

Petitioner's Exception 2: Objection to the "Preliminary Statement"

Petitioner objects to the language in the preliminary statement stating that Petitioner was seeking a return of funds that had been distributed to an agent of an alternate payee from Petitioner's FRS Investment Plan account.

As noted previously, the California child support enforcement program is referred to as a "IV-D program" because Title IV, Part D of the Social Security Act (42 U.S.C. Section 651 et seq.) requires each state to establish and enforce support orders when public assistance has been expended or, upon the request of either parent. California Family Code

§17406 provides that a local child support agency ("LCSA") [which in Petitioner's situation would be the Los Angeles County Child Support Services, or "LAC"] does not have an attorney-client relationship with either parent in a case, because it is working for the public. Petitioner ignores the fact that his former wife had assigned to LAC all of her rights relating to any support reimbursement she received from LAC, and her assignment of rights has not been revoked. [Hearing Transcript, pages 149, 160-162].

Petitioner claims that California law prevents LAC from acting as an agent. However, the ALJ does not have the requisite authority to interpret California law.

Accordingly, this portion of Exception 2 hereby is rejected.

Petitioner then goes on to complain about the Exhibit Deadline and to allege his subpoena was not honored. It is unclear how either of these statements address his exception to the preliminary statement. These statements appear to be an attempt by Petitioner improperly to introduce additional testimony. Accordingly, this portion of Petitioner's Exception 2 hereby is rejected.

. Based on the foregoing, Exception 2 hereby is rejected.

Petitioner's Exception 3: Objection to the "Efforts to Thwart LAC"

Petitioner objects to the language in the Recommended Order stating that Petitioner was successful in his attempts to avoid LAC' s collection efforts.

This exception does not clearly identify the disputed portions of the Recommended Order by page number(s) or paragraph(s) and does not include appropriate and specific citations to the record. As such, on this basis alone, it is not necessary to rule on Petitioner's Exception 3. *See*, Section 120.57(1)(k), Florida Statutes.

Additionally, Petitioner's exception consists solely of testimony and complaints as to what LAC did or did not do, rather than asserting an exception to specific portions (whether Findings of Fact or Conclusions of Law, or both) of the Recommended Order and the legal basis for the exception. On that basis alone, Exception 3 can be rejected. Further, it is not appropriate to use Exceptions to try to introduce additional testimony that was not provided during the hearing. Here, Petitioner has set forth over a page and one-half of new testimony. There is a compelling obligation for a tribunal to see to it that the end of all litigation is finally reached. *See, Alvarez v. DeAguirre*, 395 So.2d 213, 216 (Fla. 3d DCA 1981). "There comes a point in litigation where each party is entitled to some finality." *Noble v. Martin Mem'l Hosp. Ass'n, Inc.*, 710 So.2d 567, 568-569 (Fla. 4th DCA 1997).

Petitioner also filed what he deemed as an "addendum" to his Exception 3, in which Petitioner claimed that Respondent and its counsel "knowingly failed to provide [him] with all documents subpoenaed from the Respondent." This statement is a complaint about conduct of the opposing party and is not an exception to the Findings of Fact and/or Conclusions of Law in the Recommended Order. This part of Exception 3 hereby is denied.

Accordingly, Exception 3 hereby is rejected *in toto*.

FINDINGS OF FACT

The State Board of Administration adopts and incorporates in this Final Order the Findings of Fact set forth in the Recommended Order as if fully set forth herein.

CONCLUSIONS OF LAW

The State Board of Administration adopts and incorporates in this Final Order the Conclusions of Law set forth in the Recommended Order as if fully set forth herein.

ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. Respondent properly distributed funds from Petitioner's Florida Retirement System Investment Plan account pursuant to a valid Qualified Domestic Relations Order (QDRO). Accordingly, the Petitioner's petition for a hearing hereby is dismissed.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida, 32308, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Final Order is filed with the Clerk of the State Board of Administration.

DONE AND ORDERED this 13th day of September 2024, in Tallahassee, Florida.

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

Daniel Beard
Chief of Defined Contribution Programs
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.

Hillary Eason,
Agency Clerk

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by email transmission to Robert Chaney, *pro se,* at [redacted] and by UPS to [redacted]; and by email transmission to Rex Ware (RexWare@FloridaSalesTax.com), Moffa, Sutton & Donnini, P.A., Suite 330, 3500 Financial Plaza, Tallahassee, Florida 32312 and Jonathan Taylor (JonathanTaylor@FloridaSalesTax.com), Moffa, Sutton, & Donnini, P.A.,100 West Cypress Creek Road, Suite 930, Fort Lauderdale, FL 33309, this 13th day of September, 2024.

Ruth A. Smith
Assistant General Counsel
State Board of Administration of Florida
1801 Hermitage Boulevard
Suite 100
Tallahassee, FL 32308

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT LEE CHANEY,

Petitioner,

vs. DOAH CASE NO.: 24-000803

STATE BOARD OF ADMINISTRATION, Efiled Tuesday, 10 September 2024

Respondent.
_____/

AFFIDAVIT OF PETITIONER, ROBERT LEE CHANEY, AND PETITIONER'S EXCEPTIONS TO THE "RECOMMENDED ORDER" FILED HEREIN ON MONDAY, 26 AUGUST 2024 AND MOTION FOR NEW TRIAL

I, the Petitioner, Robert Lee Chaney (Robert), file this, my "*Exceptions to the 'Recommended Order' and Motion for New Trial*" on the grounds that: I did not receive a fair hearing before **Brandice D. Dickson**, Administrative Law Judge of the Division of Administrative Hearings (DOAH) because she ignored the FRS's FIDUCIARY DUTIES to me and my wife, Katherine M. Chaney and she ignored material facts favorable to us, ignored and misconstrued/misapplied relevant law and accepted Respondent's irresponsible argument that a foreign non-domestic-relations order ("Non-DRO") that is "signed" by a non-Florida, non-judge commissioner and "stamped by a non-Florida court clerk" constitutes the equivalent of a "Florida court of competent jurisdiction" with personal jurisdiction of all parties. She and the FRS, also, wrongly equated a foreign order [*drawn up mostly by non-attorneys, citing specific federal laws, but citing no state laws, intended to be a federally "qualified domestic relations order" ("QDRO"), but <u>not</u> intended to be a state domestic relations order ("DRO")*] to be both a valid California DRO and a Federal "Qualified" DRO. In fact, in law and in equity, it is an improperly qualified Non-DRO ("QNDRO").

STATE OF FLORIDA)
) SS:
COUNTY OF HIGHLANDS)

I, Robert Lee Chaney, declare under penalty of perjury under the laws of the State of Florida that the following statements of fact and the documents referenced herein are true and correct, except for those statements made upon my own experience and information, understanding or belief which I believe to be true.

No Child Support Sought – LAC knowingly mislabeled the QNDRO as one for "CHILD SUPPORT" when LAC was actually seeking INTEREST on alleged past-due WELFARE REIMBURSEMENT! This was wrong and extremely prejudicial to me. IMPORTANTLY, Judge Dickson acknowledges this FACT at paragraph # 7 of her Recommended Order:

> In 1987, in Case No. EAD 068885, filed in a California court, LAC began collection efforts against Petitioner for payments LAC made to Barbara Chaney.

LAC's claim for "CHILD SUPPORT"[1] and "PAST DUE CHILD SUPPORT" is pure fraud! LAC says my deceased former spouse applied for and received aid from June 1982 through February 1990. LAC doesn't say that I volunteered to pay Tamara support from May 1982 until April 1986 when the Pomona court suspended Tamara support. Because I began paying Tamara support to my former spouse in May 1982, she never went to court asking for any child support. LAC's purported "QUALIFIED DOMESTIC RELATIONS ORDER FOR CHILD SUPPORT" is false and misleading, because LAC – factually – seeks interest on interest from alleged WELFARE REIMBURSEMENT derived from a 1987 California court's verbally-announced decision that was never prepared and served before it was TERMINATED.

LAC is not seeking any support for my child. In a paper filed in a Highlands County, Florida circuit-court case, LAC stated (Notice of Related Cases, Exhibit X-3, X-1 and X-2):

> CSSD is requesting that Florida register and enforce case EAD0068885, which is for **welfare arrears only**. But before doing so, CSSD is requesting that Florida lift the Hendry County's court's temporary injunction orders. (Emphasis added.)

A "Welfare-Reimbursement Order" is NOT a "Child-Support Order"!

1 QNDRO, page 1, caption.

A California Appellate Court has discussed the difference between a "child support" order and a "welfare reimbursement" order:

> The county advances several arguments in support of enforcement [...]. Because each argument is premised on the faulty assumption that such a reimbursement order is a "child support order," we find none of the arguments persuasive. [p 230]
>
> [T]he portion of the underlying order at issue is not an order for child support. Rather, it is an order compelling petitioner to reimburse the county in monthly installments for AFDC benefits the county had provided petitioner's children. [p 230]
>
> [T]he judgment for reimbursement [...] does not compel petitioner to furnish support or necessary food, clothing, shelter, medical care or other remedial care for his children. P [231]
>
> An AFDC reimbursement order under section 11350 is not an order for child support. [p 231]
>
> [R]eimbursement order here enforces a duty to repay a statutorily created debt, not a duty owed to the spouse or child. Because the judgment for reimbursement under section 11350 is a money judgment in a civil action for debt rather than a child support order [...]. [p 234]
> – *Crider v. County of El Dorado*, 15 Cal.App. 4Th 227 (1993) at 230 – 234.

Judge Dickson failed to recognize the obvious, that the FRS did aid and abet LAC in the wrongful withdrawal of my money. FRS's ignoring, misconstruing and misapplying relevant law and court orders, violates both pertinent law and the FRS's own fiduciary duties owed to me and my wife, Katherine.

FRS received an "Administrative Subpoena – QDRO" from Braxton Jones, a non-attorney Support Specialist for Staff Attorney **Erena Faynblut** in Pomona, California, dated 5 August 2021. FRS failed to notify me or my wife about this "subpoena." The FRS assumed California had "jurisdiction" over them and complied with the subpoena. The FRS violated its fiduciary duties to me and my wife by not giving us any notice of this subpoena. Worse, after 16 months, the FRS sent LAC a "Warning" notice which resulted in the eventual denial of LAC's purported QDRO and the submission of more proposed QDROs, and the eventual taking of our retirement funds.

When I obtained a subpoena from Judge Dickson and sent it to Erena Ida Faynblut's last known business address, Ms. Faynblut obtained a Florida attorney, Katina M. Hardee – FBN 0016069, to make a "Limited Appearance for Motion to Quash Subpoena…" untimely filed on 29 May 2024. Ms. Hardee alleged: 9. [T]he Subpoena does not contain any facts that adequately allege the basis for invoking long-arm jurisdiction/personal jurisdiction over a non-resident witness as required under Fla. Stat. ch. Sections 48.181 and 48.193. 10. As such, service of process has not been effectuated properly on Ms. Faynblut pursuant to Florida Rules of Civil Procedure 1.140(b)(5) and should be invalidated/quashed pursuant to same and Florida Section 120.569(2)(k)(1)." See Ms. Hardee's motion at page 2, ¶ ## 9 and 10.

FACT: LAC did not serve us with any paper regarding LAC's QNDRO! Thus, the California commissioner never had personal jurisdiction over us or our retirement money. See unsigned "Proof-of-Service" filed in California on 16 February 2023.

Domestic relations law (marriage law) is governed by state law, not federal law. "Subject matter jurisdiction over divorce and equitable distribution is governed by state law. The 'whole subject of the domestic relations of husband and wife... belongs to the laws of the States and not to the laws of the United States.' [citations omitted] The Virginia Supreme Court has stated that, "jurisdiction in divorce suits is purely statutory, conferred in clear, detailed language." *Winfree v. Winfree,* Va: Court of Appeals 30 August 2005.

"A judgment is void if it has been entered by a court that did not have jurisdiction over the subject matter or the parties. [Citations omitted.] '[A]n order issued by a court without subject matter jurisdiction is, in the eyes of the law, no order at all.'" [Citation omitted.] *Op cit.*, *Winfree*. The QDRO fails to either allege or show that California had any jurisdiction over me, my spouse, my former spouse, my adult non-dependent child or any other dependent of mine.

In this case, LAC falsely claimed to be the "agent" for an "alternate payee" of my FRS governmental retirement plan. In violation of IRS code § 414(p), the withdrawal check from my account was not made payable to my spouse, former spouse, child or other dependent.

> The term "domestic relations order" refers to any judgment or order which "relates to the provision of child support [...] to a spouse, former spouse, child, or other dependent of a participant" and is issued "pursuant to a[s]tate domestic relations law [...]" 29 U.S.C. § 1056(d)(3)(B)(ii)(l); I.R.C. § 414(p)(1)(B). A "dependent" is defined as an individual "other than ... the spouse ... who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household." I.R.C. § *amended* by Pub. L. NO. 110-351, 122 Stat. 3949 (2008). – *Owens v. Automotive Machinists Pension Trust*, 551 F.3d 1138 (2009) at 1143.
>
> A QDRO must relate "to the provision of child support [...] to a [...] child or other dependent." (*Op cit*, *Owens*, at 1147-1148).

QDRO System Is Not Constitutional – It is apparent that the existing federal QDRO system fails to provide retirement-plan participants/beneficiaries with due process or with equal protection of the law, because under this system "jurisdiction" is a one-way proposition: LAC and FRS have "jurisdiction" to take people's property, but we don't have "jurisdiction" to have them appear to merely answer questions!?! FRS took our money before FRS gave us a hearing!

Unfair Treatment – Judge Dickson granted Respondent an extension of time, but refused me a similar extension, refused to accept my filed exhibits at the final hearing while she accepted exhibits from Respondent after the 28-May-hearing (i.e., "Amended Exhibit List" and "Proposed Exhibits 16 & 17" filed 28 May 2024; "Second Amended Exhibit List" and "Proposed Exhibits 18, 19 & 20" filed 29 May 2024 – and still, failed to provide two (2) subpoenaed, material exhibits: 1) the *unsigned* "proof of service" for the QNDRO -- evidence that the California commissioner had no *personal jurisdiction* over any human being; and 2) the "declaration" of Laisha Moore showing *zero* "0" child support and no child support arrears ("principal") owed at paragraph # 10.

Unrefuted Affidavit – Judge Dickson ignored my *unrefuted* affidavit (at pages 5-14) of my "*Notice of Related Cases...*" filed 14 March 2024 which showed how courts in California, Ohio,

Florida and federal bankruptcy court had rightly ordered LAC to stop taking my money; she ignored my "*Notice: LAC CSSD Does Not Represent Ms. T. Chaney*" filed 28 May 2024 which was a copy of California Family Code § 17406 listed in the caption of the QNDRO at the top of page 1.

Benefits Not "Payable" – Judge Dickson failed to acknowledge that: the FRS did not comply with its own policies or Florida statutes; FRS took money from my retirement account *before* it was *payable* to me; wrongly determined that the California commissioner was a Florida "court of competent jurisdiction"[2] under Florida law, *i.e.*, § 121.591(5) Florida Statutes; and FRS issued a check made payable to me, "Robert Chaney," not to the alleged "alternate payee." See § 121.591(1)(a)1. - 4., Florida Statutes

"Alternate Payee's" RIGHT Not "Agent's" RIGHT – Judge Dickson ignored the fact that the QNDRO said, "This Order creates and recognizes the existence of an **Alternate Payee's right** to receive a portion of the Participant's **benefits payable** under an employer sponsored defined contribution plan [...]. See page 1, ¶ # 1 emphasis added. It does not say "Alternate Payee's **AGENT's right**"! It does say a portion of my benefits "payable." It, also, does not say "the existence of an **Agent's right**"! THIS IS FRAUD! The FRS witness testified that they knew they were going to give our money to LAC, not to the alleged alternate payee. FRS did not comply with the QNDRO.

A certified copy of the court docket for California Superior Court, **Pomona**, California stamped on 16 January 2004, shows the last entry was in 1992, a "Motion of Petitioner to Compel Answers to Interrogatories is Denied." There were no docket entries from 1992 to 16 January 2004—over ten (10) years! The docket shows no entry for a "motion to change venue" from Pomona to Los Angeles. The Pomona divorce court had full, complete, original and exclusive jurisdiction over the divorce from the

2 "Court of competent jurisdiction" means a civil or criminal court in the State of Florida, or a bankruptcy court. – § 489.1402(e) Florida Statutes, but it, also includes personal jurisdiction.

day I filed, 31 March 1982, until the parties left California and Tamara turned 18, 31 January 1994. The "Stanley Mosk Courthouse" (see page 1 of Laisha Moore's declaration) is not the **Pomona** Courthouse.

A Model QDRO not a Model DRO – Judge Dickson ignored the fact that the FRS and the FRS Plan Administrator (non-attorneys) authored and published a "model language" intended to be a guide for drawing up QDROs in Florida (not "intended to be" a DRO) without citing "a domestic relations law," but–instead–citing two federal laws: the Internal Revenue Code and ERISA of 1974 "as amended."[3] The FRS failed to comply with either of these two federal laws.

Payee Not Paid! – Judge Dickson ignored court orders and a bankruptcy DISCHARGE from "courts of competent jurisdiction" favorable to us that had personal jurisdiction over the parties, ignored the fact that FRS did not pay any benefits to the alleged "alternate payee" nor "on behalf of" the alternate payee.[4]

Judge Dickson and the FRS did not comply with federal law, i.e., the Internal Revenue Code § 414(p) (1), (2), (3), (6), (7) and (8), nor the Employee Retirement Income Security Act of 1974 ("ERISA")[5] which contains no mention of any "qualified domestic relations order" ("QDRO");

Material Evidence Withheld – The FRS, and its attorneys, withheld material evidence from both its Plan Administrator, from me and from the court; further, the FRS did not comply with Florida statutes §§ 121.021(39), 121.131, 121.591—and especially 121.591(5).

EXCEPTIONS

1. **EXCEPTION TO THE "STATEMENT OF THE ISSUE"** – This case was sent to the Division of Administrative Hearings (DOAH) by the Presiding Officer, Anne Longman, in State Board of Administration (SBA) case # 2023-0558, because "determining whether a state agency

3 The QNDRO does not include the words, "as amended."
4 It is disingenuous to call her an "alternate payee" when FRS did not "PAY" her any money!
5 The foreign "order" references the "1974 ERISA", not "as amended" and not the 1984 "Retirement Equity Act (P.L. 98-397, 98 Stat. 1433, "REA").

[FRS/Plan Administrator/Alight] followed legal or regulatory requirements, or properly observed its own procedures when it reviewed a legal document for compliance, involves questions of fact." See "Recommended Order of Referral..." filed on 21 February 2024 and the Recommended Order at page 2, first ¶.

a) **Not a DRO** – The FRS authored the "model language" for a QDRO, not for a DRO, to be used evidently in Florida courts. See QNDRO at page 1, ¶ # 1.

b) **No State Domestic Relations Law** – The QNDRO does not cite **a state domestic relations law**. "The order must state that it's created pursuant to a state domestic relations law." See *Qualified Domestic Relations Order—Procedures*, Alight, January 2024 at page 4 first ¶. No specific California law is stated in the QNDRO. How can a court or a respondent/defendant know how to respond to a vague statement like this: "This Order is entered pursuant to the authority granted in the applicable domestic relations laws of the State of California." See QNDRO at page 2, ¶ # 5.

   1) **Only One Issue?** – Respondent's "Statement" says the single issue is: "Whether Respondent's distribution from Petitioner's Florida Retirement System (FRS) Investment Plan account, pursuant to a Qualified Domestic Relations Order (QDRO), complied with section 121.591, Florida Statutes."

   2) **I Am Not Terminated** – "Under the investment plan: Benefits [...] are payable under this subsection in accordance with the following terms and conditions: 1. **Benefits** are **payable only to** a **member**, an **alternate payee** [not a payee's "agent"] of a qualified domestic relations order, or a **beneficiary**.[6] 2. Benefits **shall be paid** [...] in **accordance with the law** [...]. 3. The **member must be terminated from all employment with all Florida Retirement System employers** [...]. 4. **Benefit payments may not be made**

6 LAC is not "member," "alternate payee", "beneficiary", nor an "agent" of an alternate payee.

until the member has been terminated [...]. § 121.591(1)(a)1. - 4., Florida Statutes, emphasis added.

3) **Challenge to § 121.591(5)** – I filed my *"Addendum to Petitioner's Proposed Order, Motion for Declaratory Relief and Constitutional Challenge to § 121.591(5), Florida Statutes"* on Monday, 5 August 2024. Judge Dickson did not consider my filing because she lacks necessary "jurisdiction." (See her Recommended Order at page 4, first ¶.) Interestingly, the FRS/SBA's single "ISSUE" for the 31-May-2024 hearing was whether the FRS "complied with section 121.591, Florida Statutes."[7] IN OTHER WORDS, said statute gives them "jurisdiction" over me and my FRS retirement funds, but they have no "jurisdiction" to consider my "Motion" and "Challenge"?!? This is not fair. The QNDRO did not provide any evidence that the California commissioner had personal jurisdiction over any human being. While a participant's accumulated contributions may be subject to qdros by a Florida court of competent jurisdiction, an alternate payee cannot collect money from the plan until the benefits are mature, due and "payable" to the plan member.

4) **Content Not Title** – Before the 31-May-Hearing, Judge Dickson, prematurely and prejudicially, determined that the subject Non-DRO was a "Qualified Domestic Relations Order." I objected to this on 5 March 2024 "Objection to the Notice of Hearing filed Monday, 4 March 2024." **It is the content, not the title, of a document that determines what it is.**

5) **Invalid Distribution** – The "distribution" did not comply with § 121.591, Florida Statutes. That section says, in pertinent part, at the first paragraph: "**121.591 Payment of benefits.**--Benefits may not be paid under the Florida Retirement System Investment

7 The QNDRO did not list any Florida law and courts are not allowed to "amend" litigant's filings.

Plan unless the member has terminated employment […]" I am still employed by a state agency and have been since 6 June 2017. (My former spouse died on 22 May 2017.)

6) **Distribution Not Compliant** – The "distribution" did not comply with § 121.591(5) which says, in pertinent part: "LIMITATION ON LEGAL PROCESS.--The benefits payable to any person under the Florida Retirement System Investment Plan, and any contributions accumulated under the plan, are not subject to assignment, execution, attachment, or any legal process, except for qualified domestic relations orders by a court of competent jurisdiction […]."

7) "Pension benefits are mature when the plan provides for distribution and payments are currently due and payable to the employee." *Thompson v. Thompson*, 196 Ohio App. 3D 764 (2011) at 774 (¶ # 31).

2. **EXCEPTION TO THE "PRELIMINARY STATEMENT"** – It says I was seeking a return of all funds that "had been distributed to an agent of an alternate payee from Petitioner's Plan account after [FRS] qualified a domestic relations order." In fact, there is no "alternate payee" and no "agent" as shown below.

   a) **I Still Want My Money** – I agree with the Preliminary Statement that I was seeking a return of all my money (plus interest). I still want our money.

   b) **A "Qualified Non-DRO"** – The Los Angeles County Child Support Services Department ("LAC") mostly, but not completely, copied the FRS's "model language" with the intent to create a "Qualified Domestic Relations Order" (a "QDRO" not a "DRO") under *specific* FEDERAL law, not under "a STATE" law, and submitted it to the FRS. Marriage and domestic relations are almost totally confined to state law, not federal law. Thus, it appears that the QNDRO was (in fact, in law and in equity) neither a DRO nor a QDRO. It is a wrongly qualified "non-DRO."

c) **Not an Agent** – The QNDRO says, "Any correspondence on behalf of the Alternate Payee should be sent to the [LAC] acting in the capacity of agent […]. However, California law prevents LAC from acting as "agent" in this situation: "**[T]he local child support agency […] shall give notice to the individual requesting services or on whose behalf services have been requested that the local child support agency […] does not represent the individual or the children who are the subject of the case, that no attorney-client relationship exists between the local child support agency […] and those persons.**" *California Family Code* § 17406, January 01, 2023 (emphasis added). See copy of §17406 in my "Notice" filed 28 May 2024.

d) **Exhibit Deadline Set for 24 May 2024** – A Zoom Conference was held on Tuesday, 19 March 2024 without a court reporter due to misinformation provided to me by opposing counsel that the Administrative Court would handle all court reporting. At the hearing, the court advised that "all proposed exhibits" were to be filed on or before Friday, 24 May 2024.

e) **Subpoena Not Honored** – On 2 May 2024, I sent a subpoena duces tecum from Judge Dickson to FRS officer Allison Olson via the SBA's attorneys. On 17 May 2024, the attorneys filed a "Motion to Limit Petitioner's Subpoena Duces Tecum."

f) The SBA's attorneys, at first, claimed that their client had "fully complied" with said subpoena by 24 May 2024, but they filed two amended exhibit papers on May 28 and May 29, 2024. See "Unfair Treatment" paragraph on page 5, above.

3. **EXCEPTION TO "EFFORTS TO THWART" LAC** – A legal maxim says, "*He who defends himself, harms no one.*" Judge Dickson says, I "was, by and large, successful in his efforts to thwart LAC's ability to collect, until LAC contacted the FRS in August 2021 […]."

a) LAC and the court's in three states "thwarted" LAC's efforts—under color of law–to collect welfare reimbursement based upon a void 1987 California order that LAC never served. The circuit court directed LAC to type up an order for wage assignment to reimburse LAC for aid it paid to my former (now deceased) spouse, Barbara. LAC did not obey the Pomona Court's order to prepare the order, serve it and promptly file a "return of service."

b) In late 1987, I notified the Court and LAC that I was moving to Ohio.

c) In 1989, LAC moved the Court to "terminate enforcement of child support" and to stop making payments through the Court Trustee.

d) In 1990, LAC filed a welfare-reimbursement case in Los Angeles under its own name, case # BL 0298. This case was forwarded to Ohio. We hired an attorney to defend us for several years. During our time in Ohio (1987 to 1995), LAC was unable to convince a court to issue a wage assignment order.

e) On 31 January 1994, Tamara turned 18.

f) In the summer of 1995 we moved to Avon Park, Florida.

g) Although LAC had no court order, it continued to collect our federal income tax refunds.

h) On 6 February 2001, the bankruptcy court in Palm Beach DISCHARGED the debt alleged by creditor LAC because it was not enforceable. LAC did not file any papers and did not file an appeal from this DISCHARGE.

i) Since 1987, LAC has acted under color of law, without a valid court order, to collect about $41,000 from us. LAC even took our Covid checks. They returned my wife's Covid money after she complained.

j) LAC served an income withholding order on my employer in 2004 seeking to collect $921 per month. I had to work two full-time jobs for a few weeks. I filed a complaint against my

employer and the Circuit Court Judge (Hendry County, Florida) ordered my employer to stop taking my money. LAC drew up the order and the judge signed and filed it.

k) In 2005 the Hendry Court further ordered LAC not to touch my money earned from any employer in Florida. LAC drew up this order, too. See **Exhibit V-1** and **V-2** attached to my :Notice of Related Cases…".

l) LAC filed a case in Highlands County in 2006, but abandoned it after I filed my objections.

m) LAC filed another case in Highlands County in 2015 via the Florida Department of Revenue Child Support Program ("FDR") (case # 2815-0747-FC). I objected but no hearing was held. By letter dated 2 September 2021, the FDR asked the Court to "Please close case and accounts with a zero balance." See **Exhibit EE** attached to my :Notice of Related Cases…".

n) LAC has been thwarted by itself and the courts in three different states.

o) SADLY, LAC is still taking money from my Social Security benefits and from my federal tax returns. THIS IS NOT JUSTICE. THIS IS FRAUD, otherwise known as TYRANNY!

Further affiant/declarant sayeth naught.

Under penalties of perjury, I declare that I have read the foregoing declaration/affidavit and the facts stated in it are true and correct. Executed in Avon Park, Highlands County, Florida on Tuesday, 10 September 2024.

Affiant/Declarant: Robert Lee Chaney, Petitioner,

/s/ Robert Lee Chaney

Date: Tuesday, 10 September 2024

CONCLUSION

LAC has shown no standing to take me to court. Several courts have ruled in my favor. LAC has failed to follow the law and to obey valid orders from courts of competent jurisdiction (including personal jurisdiction). LAC has misrepresented to the California commissioner and to the FRS that I

owe "child support," that I have a dependent child, and that my dependent child has "rights" to my retirement funds (LAC never alleged that my daughter "asked for my money."). LAC convinced the FRS to make out a check payable to me, not to an "alternate payee," and mail it to LAC who converted the money to its own use.

The FRS and Judge Dickson have accepted LAC's fraudulent claims by ignoring pertinent law and denying material facts, thereby showing unjustified prejudice against me.

WHEREFORE, I, the Petitioner, move this court to recommend the return of my money with interest, immediately, or in the alternative, order a new trial with a new judge, so that the court can look at all the exhibits that Respondent did not provide and some that I was not allowed to file (most of the exhibits were, already, filed with the court in my "Notice of Related Cases…"), and for such other, further and different relief that the court deems just and proper under the facts, pertinent law and equity.

Respectfully submitted this Tuesday, 10 September 2024 by Petitioner, for himself:

Robert Lee Chaney - */s/ Robert Lee Chaney*
[redacted]
Telephone: [redacted]
Message Telephone: [redacted]
Email: [redacted]

E-Service to: RexWare@FloridaSalesTax.com JonathanTaylor@FloridaSalesTax.com

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT LEE CHANEY,

Petitioner,

vs. DOAH CASE NO.: 24-000803

STATE BOARD OF ADMINISTRATION, Efiled Tuesday, 10 September 2024

Respondent.
_____/

ADDENDUM TO "AFFIDAVIT OF PETITIONER, ROBERT LEE CHANEY, AND PETITIONER'S EXCEPTIONS TO THE 'RECOMMENDED ORDER' FILED HEREIN ON MONDAY, 26 AUGUST 2024 AND MOTION FOR NEW TRIAL"

I, the Petitioner, Robert Lee Chaney (Robert), file this "Addendum" to my "*Exceptions to the 'Recommended Order' and Motion for New Trial.*"

STATE OF FLORIDA)
) SS:
COUNTY OF HIGHLANDS)

I, Robert Lee Chaney, declare under penalty of perjury under the laws of the State of Florida that the following statements of fact and the documents referenced herein are true and correct, except for those statements made upon my own experience and information, understanding or belief which I believe to be true.

EXCEPTIONS - CONTINUED

3. **EXCEPTION TO JUDGE'S "that day" STATEMENT"** –

Judge Dickson states that I "was advised to upload his proposed exhibits *that day* […]." (See her Recommended Order at page 2, last paragraph. I looked at the transcript of the 28-May-2024 telephonic hearing and here's what Judge Dickson said:

> I think you've already complied with the two major items, which is an exhibit list and the witness list, but you do need to file those exhibits. And whatever exhibits you're going to upload to eALJ, make sure you serve a copy of those on the SBA's lawyers.

When I filed my proposed exhibits to the eALJ site I checked two radio buttons so that Mr. Ware and Mr. Taylor would get electronic copies of the filing sent to their respective email addresses.

Judge Dickson states that my exhibits were filed "before the final hearing began on May 31, 2024." As I understand it, I filed and served my proposed exhibits timely.

Respondent's attorneys served me with exhibits days after the original 24-May-2024 deadline.

IMPORTANTLY: Respondent and its attorneys, Ware and Taylor, knowingly failed to provide me with all documents subpoenaed from the Respondent, i.e., the un-signed proof-of-service filed with the California commissioner and the Declaration of LAC's Laisha Moore dated 9 February 2023.

Further affiant/declarant sayeth naught.

Under penalties of perjury, I declare that I have read the foregoing declaration/affidavit and the facts stated in it are true and correct. Executed in Avon Park, Highlands County, Florida on Tuesday, 10 September 2024.

Affiant/Declarant: Robert Lee Chaney, Petitioner,

/s/ Robert Lee Chaney

Date: Tuesday, 10 September 2024

Robert Lee Chaney - */s/ Robert Lee Chaney*

[redacted]

Telephone: [redacted]
Message Telephone: [redacted]

Email: [redacted]

E-Service to: RexWare@FloridaSalesTax.com JonathanTaylor@FloridaSalesTax.com

SCRIBNER'S ERROR

NOTE: The footer on my Exceptions and Motion has the incorrect date of " Monday - 9 September 2024". The correct date is "Tuesday – 10 September 2024." I began working on the paper on Monday, but did not finish it until very late in the evening. My apologies. I just now saw the mistake.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT CHANEY,

Petitioner,

vs. Case No. 24-0803

STATE BOARD OF ADMINISTRATION,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held via Zoom video conference on May 31, 2024, before Brandice D. Dickson, Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Robert Lee Chaney, pro se
[redacted]

For Respondent: Jonathan W. Taylor, Esquire
Moffa, Sutton & Donnini, P.A.
100 West Cypress Creek Road, Suite 930
Fort Lauderdale, Florida 33309

Rex D. Ware, Esquire
Moffa, Sutton & Donnini, P.A.
3500 Financial Plaza, Suite 330
Tallahassee, Florida 32312

STATEMENT OF THE ISSUE

Whether Respondent's distribution from Petitioner's Florida Retirement System (FRS) Investment Plan account, pursuant to a Qualified Domestic Relations Order (QDRO), complied with section 121.591, Florida Statutes.

EXHIBIT A

PRELIMINARY STATEMENT

Petitioner timely filed with Respondent a Request for Intervention seeking a return of all funds that had been distributed to an agent of an alternate payee from Petitioner's FRS Investment Plan account after Respondent's contract vendor qualified a domestic relations order. Respondent investigated Petitioner's challenge and denied his request. Petitioner timely filed a Petition for Hearing on December 14, 2023, which was set for an informal hearing pursuant to section 120.57(2), Florida Statutes. The Presiding Officer in that proceeding determined that material facts were in dispute and, on February 22, 2024, the matter was referred to DOAH for a hearing pursuant to section 120.57(1).

A final hearing was scheduled for April 22, 2024. Respondent's unopposed motion to continue the hearing was granted and, by agreement of the parties, the final hearing was rescheduled for May 31, 2024, pursuant to the undersigned's Order Granting Continuance and Rescheduling Hearing by Zoom Conference, issued March 19, 2024. That Order advised the parties that all proposed exhibits "shall" be filed on or before May 24, 2024, and that all other aspects of the undersigned's previous Order of Pre-hearing Instructions (OPI), issued March 4, 2024, remained in full force and effect.

On May 22, 2024, Petitioner filed a motion to continue the final hearing, which motion was heard and denied on May 28, 2024. During that hearing, the undersigned noted that even though Petitioner had filed an exhibit list, it appeared that he had not yet uploaded his proposed exhibits on the DOAH exhibit portal as instructed in the OPI. Petitioner was advised to upload his proposed exhibits *that day* and to serve Respondent's counsel with copies. However, Petitioner's proposed exhibits were not filed until one hour before the final hearing began on May 31, 2024, nor were they served on Respondent's counsel. As such, Respondent objected to all of Petitioner's

proposed exhibits. Because Petitioner failed to timely file his proposed exhibits, only those exhibits he identified on his exhibit list as "Respondent's Exhibits filed today in this DOAH case #" were deemed timely and the balance were disallowed by the undersigned. At the conclusion of the hearing, Petitioner requested, and was granted, an opportunity to demonstrate he had timely filed his proposed exhibits. On June 3, 2024, Petitioner filed "Petitioner's Proffers" which confirmed his proposed exhibits were not filed until the morning of the final hearing. As such, the undersigned's previous ruling was not disturbed.

In order to simplify the order of presentation, Respondent presented its case first, followed by Petitioner. Respondent presented the testimony of Kathleen Marcus and Allison Olson. Respondent's Exhibits 1 through 7, 11, and 13 through 17 were admitted into evidence. Petitioner testified on his own behalf and presented the testimony of his daughter, Tamara Rapp, formerly known as Tamara Chaney.

At the conclusion of the final hearing, the parties requested an enlargement of time in which to file their proposed recommended orders (PROs). At that time, the parties were given up to 30 days after the filing of the Transcript of the proceedings in which to file their PROs. After the final hearing, Petitioner requested the opportunity to reopen discovery for the limited purpose of taking the deposition of Erena Ida Faynblut.[1] The undersigned granted Petitioner's request and he was afforded until July 19, 2024, to file any deposition transcript of Ms. Faynblut. No deposition transcript was filed.

[1] Ms. Faynblut is a California resident. Petitioner served her with a subpoena to appear at the final hearing and, on May 29, 2024, through Florida counsel, Ms. Faynblut moved to quash the subpoena. As the undersigned lacks jurisdiction to enforce the subpoena issued to her, Ms. Faynblut's motion to quash was granted. In light of the foregoing, Petitioner was allowed to supplement the record with Ms. Faynblut's deposition.

The one-volume Transcript of the proceedings was filed with DOAH on June 25, 2024, making the deadline for submission of PROs July 25, 2024. Both parties timely filed their PROs, which have been reviewed and considered by the undersigned in preparation of this Recommended Order. Petitioner filed, on August 5, 2024, an "Addendum to Petitioner's Proposed Order, Motion for Declaratory Relief and Constitutional Challenge to 121.591(5), Florida Statutes." As it was untimely, and because administrative law judges at DOAH lack jurisdiction to declare a statute unconstitutional, the undersigned did not consider that filing.

All references to Florida Statutes are to the 2022 version unless otherwise stated.

FINDINGS OF FACT

1. The FRS is a statutorily-created retirement plan for eligible employees and has two plans: a defined benefit plan (the Pension Plan), which is administered by the Department of Management Services, Division of Retirement; and a defined contribution plan (the Investment Plan), which is administered by Respondent.

2. The FRS is a government plan.[2]

3. Each member of the FRS Investment Plan has a separate account which holds the member's, and the member's employer's, monetary contributions. Those contributions may be invested at the member's direction in funds that are subject to market fluctuations.

4. Petitioner is a member of the FRS Investment Plan by virtue of his employment with an FRS-covered employer and he has an account as described above.

[2] A "government plan" is a "plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing." *See* 26 U.S.C. § 414(d).

5. Decades prior to becoming an FRS Investment Plan member, Petitioner lived in California and was married to Barbara Chaney. They had a daughter, Tamara.

6. In 1982, Barbara Chaney separated from Petitioner and began receiving welfare from Los Angeles County, California (LAC), to support Tamara who, at the time of separation, was six years old. Barbara Chaney continued to receive welfare until February 1990. Petitioner concedes that when Barbara Chaney applied for those welfare benefits she "assigned her rights" to LAC so that it could "go after" him for repayment of those benefits. Petitioner was also ordered to pay LAC for ongoing child support paid by LAC to Barbara Chaney for the benefit of Tamara.

7. In 1987, in Case No. EAD 068885, filed in a California court, LAC began collection efforts against Petitioner for payments LAC made to Barbara Chaney. Those collection efforts continued until 2023 in various forums and in multiple states.

8. Petitioner was, by and large, successful in his efforts to thwart LAC's ability to collect, until LAC contacted the FRS in August 2021 and inquired, through a subpoena, whether Petitioner had any benefits in the FRS and, if so, how much.

9. Respondent contracts with Alight Solutions for it to serve as the FRS Investment Plan's Plan Administrator and, among other responsibilities, respond to inquiries and subpoenas like that received from LAC regarding Petitioner. Alight Solutions responded to LAC's subpoena in August 2021 and informed LAC that Petitioner was a member of the FRS Investment Plan and had an account with approximately $8,000 in it.

10. Pursuant to Alight Solutions' policy and federal regulations, it placed a hold on Petitioner's account for 18 months in case LAC submitted a domestic relations order (DRO) and sought to have it deemed a QDRO.

11. As a Plan Administrator, Alight Solutions is charged by federal regulations with the duty to receive and review DROs and determine whether

any such order is a QDRO. If Alight Solutions determines a DRO is a QDRO, it distributes funds from the FRS member's account in accordance with the directions in the QDRO.

12. As discussed later, the statutes governing the FRS expressly authorize payments from FRS member accounts to satisfy QDROs entered by courts of competent jurisdiction.

13. In January 2023, Alight Solutions notified LAC that the 18-month hold on Petitioner's FRS Investment Plan account was set to expire. In response to that notification, LAC sent Alight Solutions a draft DRO that sought the funds in Petitioner's FRS Investment Plan account.

14. On February 2, 2023, Alight Solutions, through its Qualified Order Center, sent a letter to LAC notifying it that it had received the draft DRO, that the language in the DRO was approved, that it would process it as a QDRO once the court entered the order and was certified, and that Petitioner's FRS Investment Plan account was restricted pending receipt of the signed and certified DRO. Petitioner and Tamara Chaney[3] were listed as recipients of this letter as well.

15. Realizing it made a mistake, on February 28, 2023, Alight Solutions notified LAC that the pre-approval of the DRO was rescinded due to tax language in it that did not comport with the FRS Investment Plan. Petitioner was copied on this letter. After LAC sent a subsequent draft DRO with the offending tax language removed, Alight Solutions again notified LAC and Petitioner, by letter dated March 29, 2023, that the DRO was approved, it would be processed as a QDRO once signed and certified, and Petitioner's account was again restricted pending receipt of the finalized order.

16. At hearing, Kathleen Marcus, Alight Solutions' Client Manager for Qualified Domestic Relations Orders, testified that the draft DRO was

[3] Although Tamara Chaney was listed as a recipient of this letter, she never received it. Alight Solutions purposefully sent all correspondence intended for Ms. Chaney to LAC because all draft DROs prepared by LAC at issue in this proceeding named LAC as Ms. Chaney's agent and listed LAC's address for that of Ms. Chaney.

approved because it complied with the QDRO procedure manual and model language for QDROs developed by Alight Solutions and Respondent. The manual and model language were developed based on Alight Solutions' and Respondent's understanding of federal laws that govern QDROs. Specifically, the federal laws with which compliance is required for a DRO to be deemed a QDRO, and which were incorporated into the Alight Solutions manual and model language are 26 U.S.C. § 414(p) and section 206 of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1056(d)).

17. The specific portion of the manual with which Ms. Marcus testified the LAC DRO complied, and which resulted in Respondent's processing of that DRO as a QDRO, states:

> **Does the order relate to state domestic relations law?**
> See Section II of the FRS Investment Plan Procedures: Creating a Domestic Relations Order. The order must contain a statement that it is issued pursuant to state domestic relations law of a particular state and provide the state name or a citation to state law.
>
> **Does the order clearly state that it applies to the qualified plan(s) of the participant?**
> The order must specify the plan to which it applies, i.e., name the plan sponsor [employer] and the type of plan to be divided (i.e. defined contribution [savings]). The plan name is the FRS Investment Plan.
>
> **Does the order specify the name and last known address of the participant and Alternate Payee?**
> The order must contain this information or reference an attachment that provides this information. The date of birth and Social Security number of the Alternate Payee are also required to establish the account.

Does the order specify the benefit to be paid to each Alternate Payee and the manner in which such amount or percentage is to be determined?
The order must contain a single valuation date and a clear benefit assignment. If the member transferred from the Pension Plan to the Investment Plan, the valuation date must be after the Transfer Date.

Does the order specify the manner of payment and the time at which the payments will commence to be paid to each Alternate Payee?
A separate account will be established as soon as administratively reasonable following qualification for the Alternate Payee.

Does the order meet the survivorship procedures established for the plan(s)?
The Alternate Payee may not name a beneficiary in the order for payment of savings benefits upon the Alternate Payee's death.

Does the order meet taxation language IRC rules?
If the Alternate Payee is a spouse or former spouse, the Alternate Payee will be taxed on any distributions.

If the Alternate Payee is a child, the participant will be taxed.

Is the order a court-certified document?
If the order is a final order, is it signed by the judge and does it have a clerk certification stamp or seal? Please note that orders submitted as drafts for preliminary review are also accepted and can be sent via fax or uploaded to www.QOCenter.com.

18. Ms. Marcus testified that, as happened here, a party will often submit a draft DRO to Alight Solutions to secure pre-approval—before the proposed DRO is submitted to a court for entry of the order—so that they have

assurance the final product will be accepted as a QDRO once signed and certified.

19. During the time LAC was seeking pre-approval from Alight Solutions, Petitioner notified Tamara (Chaney) Rapp of LAC's attempts at securing a QDRO to execute against his FRS Investment Plan account. As a result, Ms. Rapp participated in the April 6, 2023 hearing held before Commissioner Angela Davis in the Superior Court of California on the merits of the DRO that had been approved by Alight Solutions on March 29, 2023.

20. Ms. Rapp testified that, although she was allowed to participate in that hearing, her responses to questions were "completely dismissed." It was not clear to the undersigned what those responses were or what she had been asked, but during the final hearing before the undersigned she testified that she now believes the funds should be given to her, and not LAC.

21. There was no evidence as to whether Petitioner participated in the April 6, 2023 hearing. There is no other evidence of what occurred at that hearing, what issues were raised or not raised, what was proven or disproven, except for what appears in Commissioner Davis's subsequent order.

22. As a result of the April 6, 2023 hearing, LAC secured an order in Case No. EAD068885, signed by Commissioner Davis, and certified, with a stamp, by the Clerk of the Superior Court of California, County of Los Angeles (the Order). LAC sent the Order to Respondent for it to process as a QDRO.

23. The Order shows that Case No. EAD068885 is a Superior Court of California proceeding between Petitioner and Barbara Chaney and that it is a "Qualified Domestic Relations Order For Child Support."

24. The Order states, in pertinent part:

> 1. **Effect of This Order as a Qualified Domestic Relations Order:** This Order creates and recognizes the existence of an Alternate Payee's right to receive a portion of the Participant's benefits payable under an employer sponsored defined

contribution plan which is qualified under Section 401 of the Internal Revenue Code (the "Code") and the Employee Retirement Income Security Act of 1974 ("ERISA"). It is intended to constitute a Qualified Domestic Relations Order ("QDRO") under section 414p of the Code and Section 206(d)(3) of ERISA.

2. **Participant Information:**
   Name: Robert Chaney
   Birth Date: will be provided on separate attachment[4]
   Social Security Number: will be provided on separate attachment
   Address: will be provided on separate attachment

3. **Alternate Payee Information:**
   Name: Tamara Chaney
   Birth Date: will be provided on separate attachment
   Social Security Number: will be provided on separate attachment
   Address: will be provided on separate attachment

   Any correspondence on behalf of the Alternate Payee should be sent to the Los Angeles County Department of Child Support Services acting in the capacity of agent at the following address:

   Los Angeles County Child Support Services Department
   Attn: Erena I. Faynblut, Esq.
   3179 W. Temple Ave.
   Pomona, CA 91768

4. **Plan Name and Plan Carrier Name: The Participant is a participant in the FRS Investment Plan ("Plan").** Any changes in plan carrier, plan administrator, plan sponsor or name of the Plan shall not affect Alternate Payee's rights as provided under this Order.

---

[4] By separate attachment filed with the DRO, Petitioner's address, Social Security number, and date of birth were provided, as were Ms. (Chaney) Rapp's Social Security number and date of birth. Ms. (Chaney) Rapp's address was listed as "c/o Los Angeles County Child Support Services Department, 3179 W. Temple Ave. Pomona, CA 91768."

5. **Pursuant to State Domestic Relations Law:** This Order is entered pursuant to the authority granted in the applicable domestic relations laws of the State of California.

6. **For Provision of Past-Due Child Support Payments:** This Order relates to the provision of past-due "child support." This Order assigns to the Alternate Payee an amount equal to the lesser of:

(a) $17,500
or
(b) 100% (one hundred percent) of the Participant's total vested account balance under the Plan as of the date of segregation.

***

7. **Commencement Date and Form of Payment to Alternate Payee:** The Alternate Payee shall receive his/her share of the benefits as soon as administratively feasible following the date this Order is approved as a QDRO by the Plan Administrator. Benefits will be payable to the Alternate Payee in the form of a single lump-sum cash payment. This distribution amount is not an eligible rollover distribution and, therefore, the Alternate Payee cannot and will not elect to rollover this distribution amount.

   The QDRO distribution check shall be made payable to the State Department Unit for the benefit of the Alternate Payee and mailed to the following address:

   California State Disbursement Unit
   P.O. Box 989067
   West Sacramento California 95798-9067

   In order to ensure that the Participant is properly credited for his/her child support obligation, please be sure that the Alternate Payee's distribution check includes (1) Participant's name, Robert Chaney, (2) legal case, EAD068885, and (3) CSE Number 0370010901322.

***

10. **Savings Clause:** This Order is not intended, and shall not be construed in such a manner as to require the Plan:

(a) to provide any type or form of benefit option not otherwise provided under the terms of the Plan;

***

25. Ms. Marcus testified that Alight Solutions processed the draft DRO, and ultimately the Order, as a QDRO knowing that LAC was acting as Tamara Chaney (Rapp)'s agent and that Alight Solutions relied on the Order to demonstrate LAC had the right to pursue Petitioner's FRS funds for unpaid child support. She further testified that Alight Solutions has no duty to investigate the underlying factual representations in any signed and certified order under consideration for processing as a QDRO.

26. By letter dated April 27, 2023, Alight Solutions' Qualified Order Center notified LAC, and Petitioner by copy, that it had received the Order and determined it satisfied the FRS Investment Plan's requirements to be deemed a QDRO. The letter advised that the alternate payee, "Tamara Chaney, ... is awarded all ... of the member's retirement plan benefits, based on the QDRO." It further advised that the account balance would be valued on the Liquidation Date and would be subject to market price changes until a separate account was set up for the alternate payee to receive the funds.

27. On May 3, 2023, Petitioner was notified by Alight Solutions that 100% of his FRS Investment Plan account, $14,883.60, was transferred from his account on May 2, 2023, to Tamara Chaney as the alternate payee named in the QDRO. After the transfer, all restrictions on his account were lifted.

28. On May 9, 2023, a check made payable to the California Disbursement Unit in the amount of $14,500.65 was drawn on the account of the FRS Investment Plan Administrator. The check also included Petitioner's name

and reference to the underlying case numbers EAD068885 and CSE0370010901322 in accordance with the Court's direction in the QDRO.

29. That check was negotiated by the California State Treasurer on May 15, 2023.

30. Ms. Marcus testified that the lesser amount of the check reflects the market losses that occurred between the time Petitioner's account balance was transferred to the account set up for his daughter and the time the account was liquidated. Her testimony is credited.

31. LAC's pursuit, and ultimate receipt of, funds from Petitioner's FRS Investment Plan account was in its capacity as agent for Tamara (Chaney) Rapp, Petitioner's child who received welfare and child support, as a result of Barbara Chaney's application for those benefits.

32. LAC did not conceal from Commissioner Davis that LAC was acting as Ms. Rapp's agent, that it was seeking recoupment of back child support owed by Petitioner, and that LAC would be the recipient of the funds from Petitioner's FRS Investment Plan account.

33. Petitioner asserts that Respondent should not have qualified the Order as a QDRO due to substantive and procedural errors including: in 2023, the Superior Court of California did not have jurisdiction over him; LAC failed to reduce its claim to a judgment and there was never any underlying order directing him to pay LAC anything after 1987; he did not owe any money to LAC because he had already paid LAC enough to cover any welfare and child support paid to Barbara and Tamara; if he had owed any money to LAC it was only interest and not principal; and any claim of LAC against him was previously extinguished by a bankruptcy court.

34. The Order demonstrates that the California Court was satisfied that it possessed the requisite jurisdiction, that Petitioner owed unpaid child support to LAC in the amount of $17,500, and that the claim had not been extinguished. To the extent that Petitioner could prove otherwise, his efforts to attack LAC's claims should have been adjudicated in that Court. The

undersigned lacks jurisdiction to address any of these issues as DOAH is not a court of competent jurisdiction and lacks the authority to undermine the Order or otherwise to address the correctness of the contents of the Order.

35. Petitioner further asserts that Respondent should not have qualified the Order as a QDRO because it does not comply on its face with federal laws governing QDROs or the statutes governing FRS. Specifically, he asserts that the Order should be disqualified because the Order was not registered in any Florida court and that LAC improperly received his funds as an agent of Tamara Chaney when agents are not authorized to receive FRS Investment Plan benefits under Florida or federal law. The undersigned does have jurisdiction to address those issues.

36. On review of the evidence received at the final hearing, the undersigned finds that the Order was properly processed as a QDRO by Respondent as it: was issued by a court of competent jurisdiction, stamped by the Clerk of the Superior Court of California for Los Angeles County, was related to child support, was issued pursuant to California domestic relations law, identified the FRS Investment Plan, included Petitioner's name and address, named a child of Petitioner as an alternate payee, and identified LAC as the agent of the alternate payee, which elected the lump sum payment to LAC of Petitioner's entire FRS Investment Plan balance.

37. Because the Order included the information required by federal and Florida laws governing QDROs, Alight Solutions correctly qualified it as a QDRO and Respondent properly distributed Petitioner's FRS Investment Plan account in favor of LAC, as agent for Tamara (Chaney) Rapp.

CONCLUSIONS OF LAW

38. DOAH is a statutorily-created division within the Department of Management Services, an agency of the State of Florida. § 20.22(2)(f), Fla. Stat. Administrative agencies are creatures of statute and have "only such powers as statutes confer." *State ex rel. Greenberg v. Fla. State Bd. of*

Dentistry, 297 So. 2d 628 (Fla. 1st DCA 1974). "An administrative agency has only such power as granted by the Legislature and may not expand its own jurisdiction." *Rineall v. Abifaraj*, 908 So. 2d 1126 (Fla. 1st DCA 2005). There is no statute granting DOAH jurisdiction to modify or review the contents of the Order as entered by the Superior Court of California. Rather, DOAH has jurisdiction only to review whether Alight Solutions' determination that the Order's contents complied with section 121.591—and the applicable provisions of Internal Revenue Code as discussed below—and that Respondent's distribution was based on that determination. Within that framework, DOAH has jurisdiction over the subject matter and parties to this action in accordance with sections 120.569 and 120.57(1).

39. Petitioner bears the burden of proving, by a preponderance of the evidence, that Respondent's disbursement of his FRS Investment Plan benefits to LAC failed to comply with section 121.591. § 120.57(1), Fla. Stat.

40. The Florida Legislature created the FRS Investment Plan as detailed in section 121.4501(1). Payments from the plan are made pursuant to section 121.4501(7). Administration of the FRS Investment Plan, including payments from the plan, must comply with the Internal Revenue Code pursuant to section 121.4501(13). Section 121.4501 states, in pertinent part:

> (1) The Trustees of the State Board of Administration shall establish a defined contribution program called the "Florida Retirement System Investment Plan" or "investment plan" for members of the Florida Retirement System under which retirement benefits will be provided for eligible employees who elect to participate in the program. The retirement benefits shall be provided through member-directed investments, in accordance with s. 401(a) of the Internal Revenue Code and related regulations. The employer and employee shall make contributions, as provided in this section and ss. 121.571 and 121.71, to the Florida Retirement System Investment Plan Trust Fund toward the funding of benefits.

***

(7) Benefits.--Under the investment plan, benefits must:

(a) Be provided in accordance with s. 401(a) of the Internal Revenue Code.[5]

(b) Accrue in individual accounts that are member-directed, portable, and funded by employer and employee contributions and earnings thereon.

(c) Be payable in accordance with s. 121.591.

***

(13) Federal requirements.—

(a) This section shall be construed, and the investment plan shall be administered, so as to comply with the Internal Revenue Code, 26 U.S.C., and specifically with plan qualification requirements imposed on governmental plans under s. 401(a) of the Internal Revenue Code. The state board may adopt rules reasonably necessary to establish or maintain the qualified status of the investment plan under the Internal Revenue Code and to implement and administer the investment plan in compliance with the Internal Revenue Code and as designated under this part; provided however, that the board shall not have the authority to adopt any rule which makes a substantive change to the investment plan as designed by this part.

(b) Any section or provision of this chapter which is susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy requirements imposed by s. 401(a) of the Internal Revenue Code.

[5] 26 U.S.C. § 401(a).

41. Section 121.591(1) states, in pertinent part:

> (1) Normal benefits.--Under the investment plan:
>
> (a) Benefits in the form of vested accumulations as described in s. 121.4501(6) are payable under this subsection in accordance with the following terms and conditions:
>
> 1. Benefits are payable only to a member, an alternate payee of a qualified domestic relations order, or a beneficiary.
>
> 2. Benefits shall be paid by the third-party administrator or designated approved providers in accordance with the law, the contracts, and any applicable board rule or policy.

42. Taken together, the above statutes provide that benefits paid from the FRS Investment Plan must comply with section 121.591 and section 401(a) of the Internal Revenue Code.

43. Section 401(a) of the Internal Revenue Code provides for qualification (i.e., favorable tax treatment) of retirement plans that comply with that section. Pursuant to section 401(a)(13) of the Internal Revenue Code, a retirement plan will not be a qualified plan unless the plan states that the benefits provided under that plan cannot be assigned or alienated. Section 401(a)(13) states:

> (13) Assignment and alienation.--
>
> (A) In general.--A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of

> this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on September 2, 1974.
>
> (B) Special rules for domestic relations orders.-- Subparagraph (A) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that subparagraph (A) shall not apply if the order is determined to be a qualified domestic relations order.

44. Thus, a plan is required to preclude voluntary and involuntary assignments in order to remain a qualified plan. Qualified retirement plans, like the FRS, include "anti-alienation" provisions that prohibit benefits from being subject to all manner of alienation including garnishment, attachment, levy, or any legal process, in order to satisfy the requirement of section 401(a)(13).

45. In regards to the FRS as a system, and the FRS Investment Plan in particular, these anti-alienation provisions are codified in sections 121.131 and 121.591(5), respectively. Section 121.131, in part I of chapter 121[6] states:

> The benefits accrued to any person under the provisions of this chapter and the accumulated contributions, securities, or other investments in the trust funds hereby created are exempt from any state, county, or municipal tax of the state and shall not be subject to assignment, execution, or attachment or to any legal process whatsoever.

[6] Chapter 121 is divided into three parts: I, II, and III. Provisions of part I "shall be applicable to parts II and III to the extent such provisions are not inconsistent with, or duplicative of, the provisions of parts II and III." *See* § 121.012, Fla. Stat.

46. Section 121.591(5), in part I of chapter 121, states:

> (5) Limitation on legal process.--The benefits payable to any person under the Florida Retirement System Investment Plan, and any contributions accumulated under the plan, are not subject to assignment, execution, attachment, or any legal process, except for qualified domestic relations orders by a court of competent jurisdiction, income deduction orders as provided in s. 61.1301, and federal income tax levies.

47. As stated above in section 401(a)(13)(B), disqualification of a plan from favorable tax treatment does not result if an assignment of benefits is made pursuant to a QDRO.

48. Federal law does not require state governmental plans, like the FRS, to recognize QDROs, but Florida has expressly done so in section 121.591(5).

49. Because the FRS Investment Plan must pay benefits in accordance with section 401(a), including the payment of benefits through QDROs as detailed in subsection (13)(B) of that section, the provisions of 26 U.S.C. § 414(p) governing QDROs issued to governmental plans apply. 26 U.S.C. § 414(p)(11).

50. Section 414(p) of the Internal Revenue Code states, in pertinent part:

> (p) Qualified domestic relations order defined.--For purposes of this subsection and section 401(a)(13)—
>
> (1) In general.—
>
> (A) Qualified domestic relations order.--The term "qualified domestic relations order" means a domestic relations order--
>
> (i) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(ii) with respect to which the requirements of paragraphs (2) and (3) are met.

(B) Domestic relations order.--The term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which—

(i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(ii) is made pursuant to a State or Tribal domestic relations law (including a community property law).

***

(2) Order must clearly specify certain facts.--A domestic relations order meets the requirements of this paragraph only if such order clearly specifies--

(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(B) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(C) the number of payments or period to which such order applies, and

(D) each plan to which such order applies.

(3) Order may not alter amount, form, etc., of benefits.--A domestic relations order meets the requirements of this paragraph only if such order--

(A) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(B) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(C) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(4) Exception for certain payments made after earliest retirement age.—

(A) In general.--A domestic relations order shall not be treated as failing to meet the requirements of subparagraph (A) of paragraph (3) solely because such order requires that payment of benefits be made to an alternate payee--

(i) in the case of any payment before a participant has separated from service, on or after the date on which the participant attains (or would have attained) the earliest retirement age,

(ii) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of the benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

(iii) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of clause (ii), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(B) Earliest retirement age.--For purposes of this paragraph, the term "earliest retirement age" means the earlier of—

(i) the date on which the participant is entitled to a distribution under the plan, or

(ii) the later of—

(I) the date the participant attains age 50, or

(II) the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(5) Treatment of former spouse as surviving spouse for purposes of determining survivor benefits.--To the extent provided in any qualified domestic relations order—

(A) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of sections 401(a)(11) and 417 (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes), and

(B) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 417(d).

(6) Plan procedures with respect to orders.—

(A) Notice and determination by administrator.--In the case of any domestic relations order received by a plan—

(i) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(ii) within a reasonable period after receipt of such order, the plan administrator shall determine

whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(B) Plan to establish reasonable procedures.--Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

(7) Procedures for period during which determination is being made.—

(A) In general.--During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this paragraph referred to as the "segregated amounts") which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(B) Payment to alternate payee if order determined to be qualified domestic relations order.--If within the 18-month period described in subparagraph (E) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(C) Payment to plan participant in certain cases.--If within the 18-month period described in subparagraph (E)—

(i) it is determined that the order is not a qualified domestic relations order, or

(ii) the issue as to whether such order is a qualified domestic relations order is not resolved, then the plan administrator shall pay the segregated

amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(D) Subsequent determination or order to be applied prospectively only.--Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in subparagraph (E) shall be applied prospectively only.

(E) Determination of 18-month period.--For purposes of this paragraph, the 18-month period described in this subparagraph is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(8) Alternate payee defined.--The term "alternate payee" means any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(9) Subsection not to apply to plans to which section 401(a)(13) does not apply.--This subsection shall not apply to any plan to which section 401(a)(13) does not apply. For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a)(13) applies.

***

(11) Application of rules to certain other plans.--For purposes of this title, a distribution or payment from a governmental plan (as defined in subsection (d)) or a church plan (as described in subsection (e)) or an eligible deferred compensation plan (within the meaning of section 457(b)) shall be treated as made pursuant to a qualified domestic relations order if it

> is made pursuant to a domestic relations order which meets the requirement of clause (i) of paragraph (1)(A).
>
> ***

51. On its face, the Order at issue recited that it is a "domestic relations order" that "creates and recognizes the existence of an Alternate Payee's right to receive" Petitioner's FRS Investment Plan benefits. The Order was issued by a court of competent jurisdiction. CAL. CONST. of 1897, art. 6 § 1 (1966) ("The judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts, all of which are courts of record."). As such, the Order meets the requirements of section 414(p)(1)(A).

52. The Order further states it "relates to the provision of past-due 'child support,'" names Tamara Chaney (Rapp), Petitioner's daughter, as the child at issue, and states it is entered pursuant to "domestic relations laws of the State of California." As such, the Order meets the requirements of section 414(p)(1)(B).

53. Section 414(p)(2)(A) requires the DRO state "*the* name and *the* last known mailing address" of the plan participant, but requires only "*the* name and address" for the alternate payee. The Order states the name and the last known mailing address of Petitioner and names Tamara Chaney (Rapp) as the alternate payee while providing LAC's address as *an* address for her, acting as her agent. It does not appear that the actual address, or even the last known address, of the named alternate payee is a requirement. Thus, the question is whether provision of *an* address, as an alternate interpretation of the requirement, complies with section 414(p)(2)(A).

54. In order to maintain the FRS as a "qualified plan" and protect its favorable tax treatment, the Florida Legislature has mandated that any provision relating to the FRS Investment Plan must be construed and administered in a way that does not jeopardize its plan qualification. *See* § 121.30, Fla. Stat. That section states, in pertinent part:

> 121.30. Statements of purpose and intent and other provisions required for qualification under the Internal Revenue Code of the United States
>
> Any other provisions in this chapter to the contrary notwithstanding, it is specifically provided that:
>
> ***
>
> (7) Any provision of this chapter relating to an optional annuity or retirement program must be construed and administered in such manner that such program will qualify as a qualified pension plan under applicable provisions of the Internal Revenue Code of the United States.
>
> (8) The provisions of this section are declaratory of the legislative intent upon the original enactment of this chapter and are hereby deemed to have been in effect from such date.

55. As stated earlier, qualified plans are those that, among other requirements, restrict alienation of benefits except when alienation occurs by way of a QDRO. The Order on review is a QDRO only if it meets, or is not in contravention of, the requirements of section 414(p).

56. Because the provision of *an* address, as opposed to *the* address, for the alternate payee, in a DRO seeking to be deemed a QDRO, does not appear to be at odds with section 414(p)(2)(A), and in light of section 121.30 requiring the undersigned to construe Alight Solution's administration in such a way as to not jeopardize the FRS's qualified status, the undersigned concludes that the provision of LAC's address for the alternate payee complies with section 414(p)(2)(A).

57. The Order specifies that 100% of the Petitioner's FRS Investment Plan benefits are "payable to the alternate payee in the form of a single lump-sum cash payment." Thus, the Order complies with section 414(p)(2)(B)-(D).

58. The Order does not increase, or change the type of, benefits provided by the FRS Investment Plan nor is there any other alternate payee named to the plan at issue. Thus, the Order complies with section 414(p)(3).

59. There is no requirement in section 121.591 or section 414(p) that a DRO must be "registered" with a court in the state of Florida to be deemed a QDRO, as advanced by Petitioner. Indeed, section 414(p)(6)-(7) regarding the procedures a plan administrator must undertake during the qualifying process make no mention of involving any court whatsoever. There being no requirement to "register" the QDRO at issue, or otherwise seek court approval, it does not fail to be a QDRO for that reason.

60. This makes sense from a practical standpoint as well because processing, and payments as a result of, QDROs are designed to be ministerial in nature. *Brown v. Continental Airlines, Inc.* 647 F. 3d 221 (5th Cir. 2011)(plan administrators alone determine whether a DRO is qualified pursuant to a "statutory checklist").

61. Petitioner also asserts that the DRO should not have been deemed a QDRO because LAC, as agent of the alternate payee, is not authorized to receive the benefits from his FRS Investment plan account. As stated in section 121.591(1)(a)1., the FRS authorizes benefits be paid only to members, alternate payees named in a QDRO, or beneficiaries.

62. As concluded in paragraph 49 of this Recommended Order, the FRS Investment Plan must pay benefits in accordance with section 401(a), including the payment of benefits through QDROs, thereby incorporating the provisions of section 414(p).

63. Section 414(p) of the Internal Revenue Code does not prevent payment to agents of alternate payees named in QDROs and Congress did not intend such payments, when the agent is a state agency collecting welfare payments, to disqualify a DRO from being a QDRO. *See* Staff of the Joint Committee on Taxation, Explanation of Technical Corrections to the Tax Reform Act of 1984

and Other Recent Tax Legislation, 100th Cong., 1st Sess. (Comm. Print 1987) at 222.

64. As stated by the Joint Committee on Taxation in relation to section 414(p):

> *The qualified domestic relations order provisions do not prevent the payment of amounts in pay status with respect to an alternate payee to a State agency that is an agent of an alternate payee* or the payment of such amounts if the alternate payee consents to the such payment (for example, to meet the requirements relating to Aid to Families with Dependent Children). *In such a case, payment to the agency does not result in disqualification of the order...* . (emphasis added).

65. Because the payment to an agent of the alternate payee is permitted under section 414(p) based on the above explanation from Congress, and because the undersigned is constrained by section 121.30(7) to construe section 121.591(1)(a)1. in a way that comports with the Internal Revenue Code and does not jeopardize the qualified status of the FRS, the undersigned concludes that payments to state agencies as agents of alternate payees, when made on behalf of the alternate payee, is implied by, and not in contravention of, section 121.591(1)(a)1.

66. This conclusion is in harmony with traditional notions of the principal and agency relationship in the law. "Implied authority may arise as a necessary or reasonable implication in order to effectuate other authority expressly conferred and embraces authority to do whatever acts are incidental to, or are necessary, usual, and proper to accomplish or perform, the main authority expressly delegated to the agent." *Am. Jur. 2d*, Agency § 68.

67. The Order states that the alternate payee "elects to receive his/her distribution in the form of a single lump-sum cash payment" and that the payment was by check made payable to LAC "for the benefit of the Alternate

Payee" and mailed to LAC. Notably, the Order did not state that the "agent" of the alternate payee made that election. The undersigned concludes the alternate payee gave consent at the April 6, 2023, hearing for LAC to receive the funds. Even in the absence of consent by an alternate payee, payment to her agent does not run afoul of section 414(p) or disqualify an otherwise compliant QDRO. In any event, the undersigned has no jurisdiction to collaterally attack the Order, nor did Tamara (Chaney) Rapp offer testimony to refute these findings.

68. As to the balance of Petitioner's disagreement with Alight Solutions' and Respondent's actions, it is clear to the undersigned that plan administrators have no authority to question whether a DRO presented for qualification as a QDRO is fair, reasonable, correct, an injustice, or even fraudulent. *Blue v. UAL Corp.*, 160 F. 3d 383 (7th Cir. 1998)("Pension plan administrators are not lawyers, let along judges, and the spectacle of administrators second-guessing state judges' decisions under state law would be repellant."); *Hawkins v. C.I.R.*, 86 F. 3d 982 (10th Cir. 1996)(language of order controls, not intentions of the parties).

69. When presented with a DRO, plan administrators cannot refuse to qualify it for any reason other than those enumerated in section 414(p) of the Code or the retirement plan at issue. Where a DRO fails to comply with a retirement plan provision, and that provision does not conflict with section 414(p), then a plan administrator can—as Alight Solutions did with the DRO that contained offending tax language—disqualify the DRO.

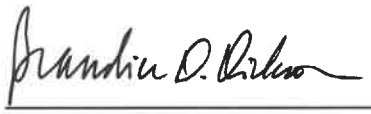
70. Because the DRO was properly deemed a QDRO by Alight Solutions, Respondent's disbursement of Petitioner's FRS Investment Plan account complied with section 414(p), and, in turn, with section 121.591.

71. To the extent the specific amount of the distribution was lower than what Petitioner expected, it is concluded that the lower amount was the result of market forces as a result of liquidating Petitioner's FRS Investment Plan account when the investments in his account experienced market losses.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the State Board of Administration enter a final order dismissing Petitioner's petition.

DONE AND ENTERED this 26th day of August, 2024, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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this 26th day of August, 2024.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.