

# JUDICIAL PENSIONS: SAFEGUARDING BENEFICIARIES INTERESTS

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**T**HIS PACKET PROVIDES INFORMATION FOR JUDGES regarding the pension benefits available to their beneficiaries should the judge die while still in office and strategies for protecting those benefits.

Under the current Retirement and Social Security Law, the beneficiaries of a judge who dies in office will not receive the judge's pension. Depending on the judge's age at the time of death and the time the judge has accumulated through public service (referred to as "years of service"), the value of any death benefit may be less than that of the pension benefit available to the judge's beneficiaries had the judge retired before dying. Indeed, for judges who are eligible to retire, the longer their public service (and, therefore, the more years of credit they have accumulated) the more likely it is that, should they die in office, the death benefit will be less than the pension benefit.

Until the statute is changed, judges may take steps now to maximize the financial benefits their beneficiaries will receive should the judge die while still in office. These steps are outlined in this packet, which contains the following:

- **OVERVIEW OF BENEFITS** when a judge dies while still in office
- **INFORMATION TO GUIDE JUDGES** in minimizing adverse financial consequences for their beneficiaries if the judge dies while in office, including an explanation of the advantages of executing a Durable General Power of Attorney
- **A DURABLE GENERAL POWER OF ATTORNEY FORM** and information on obtaining appropriate retirement application forms.

Questions about this packet and any other matters concerning the retirement benefits and options available to judges should be directed to the OCA Judiciary Benefits Office at 518-285-8370 or the Office of Judicial Support at 212-428-5558. The Judiciary Benefits Office is also available to assist judges in determining the number of years of service credit they have in the retirement system.

## **OVERVIEW OF RETIREMENT TIERS**

**LIKE ALL OTHER MEMBERS OF THE RETIREMENT SYSTEM**, judges are assigned a Tier on the date they join the retirement system. If a judge joined the system before July 1, 1973, he or she was assigned to Tier 1; if on or after that date but before July 27, 1976, Tier 2; if on or after July 27, 1976 but before September 1, 1983, Tier 3; and if on or after September 1, 1983, Tier 4. A judge's Tier assignment determines a broad range of retirement benefits and options, including the date that he or she is authorized to retire. It will also dictate the pension benefits a judge's beneficiaries receive should a judge die while still in office. The various differences in retirement system membership entitlements and restrictions are not the subject of this packet. Comprehensive information on these matters is available through the OCA Judiciary Benefits Office and the State Comptroller's Retirement Office.

## **TIER 1**

**JUDGES WHO HAVE A TIER 1 MEMBERSHIP DATE** (they joined the retirement system before July 1, 1973) do not share the same risk as judges in Tiers 2, 3 and 4 if they die while still in office. This is because the beneficiaries of judges in Tier 1 are eligible for an Alternative Death Benefit that can be paid either as a lump sum or as an annuity.

## **TIERS 2, 3 AND 4**

**IF A JUDGE WITH A TIER 2, 3 OR 4 MEMBERSHIP DATE** dies while still in office, his or her beneficiaries will not receive the pension benefit. Instead, the beneficiaries will receive a single, lump sum death benefit of up to three times the judge's annual salary. This benefit diminishes by four percent each year, once the judge reaches age 60, until age 70. For example, if a Supreme Court Justice is eligible for an in-service death benefit but continues to work after age 60, the Justice's benefit is reduced as follows:

<b>AGE</b>	<b>DEATH BENEFIT</b>
61 . . .	\$393,696
62 . . .	\$377,568
63 . . .	\$361,152
64 . . .	\$344,736
65 . . .	\$328,320
66 . . .	\$311,904
67 . . .	\$295,488
68 . . .	\$279,072
69 . . .	\$262,656
70 . . .	\$246,240

## **DURABLE GENERAL POWER OF ATTORNEY**

**ONE OPTION FOR EVERY JUDGE TO CONSIDER** — regardless of whether the judge currently has health concerns — is to execute a Durable General Power of Attorney. In the event a judge is unable to sign retirement documents, it will be critically important to have a power of attorney in place designating an agent to conduct retirement benefit transactions on the judge's behalf. This includes execution and delivery of any application that may be required under the terms of any retirement benefit or plan in which the judge has an interest.

A judge's selection of an authorized agent is an important decision. The agent should be someone who the judge is confident will be available to sign the application on the judge's behalf should time be of the essence to ensure that the application is on file with the State retirement system (e.g., as explained herein, an application for Service Retirement may need to be filed immediately to begin the 30-day waiting period). The statutory Durable General Power of Attorney form (see GOL § 5-1501) included with this packet may be used to make this

designation. Note that this form includes a list of the specific powers a judge may grant to the designated agent, including the power to authorize “retirement benefit transactions.” Note also that the form must be notarized.

## **THREE CATEGORIES OF RETIREMENT**

**T**HERE ARE THREE TYPES OF RETIREMENT. Two are categories of disability retirement: Ordinary Disability Retirement and Accidental Disability Retirement. The third category is regular retirement, referred to as “Service Retirement.”

### **ORDINARY DISABILITY RETIREMENT**

**IF A JUDGE BECOMES UNABLE TO PERFORM JUDICIAL RESPONSIBILITIES** because of a permanent physical or mental incapacity, the judge may be eligible for an Ordinary Disability retirement benefit. A judge must have at least ten years of service in the State retirement system to qualify for Ordinary Disability Retirement.

### **ACCIDENTAL DISABILITY RETIREMENT**

**REGARDLESS OF THE NUMBER OF YEARS OF SERVICE A JUDGE MAY HAVE** in the retirement system, if a judge becomes permanently incapacitated, either physically or mentally and unable to perform judicial responsibilities as the direct result of an on-the-job accident that was not due to the judge’s own willful negligence, the judge may be eligible for an Accidental Disability Retirement benefit. If a judge qualifies for the Accidental Disability Retirement, the monthly benefit will vary depending on Tier level but likely will be greater than the Ordinary Disability Retirement benefit.

A judge who files for either Ordinary Disability Retirement or Accidental Disability Retirement may not ultimately retire should the judge recover sufficiently to return to work. However, filing the application for disability retirement (along with a Retirement Option Election Form — the form used to select a retirement payment option) can help to protect the judge’s beneficiaries. If the judge meets the eligibility requirements for disability retirement but dies before retiring and the cause of death is directly related to the disability claimed in the retirement application, the disability application will be approved effective the day before the judge’s death. This protects the judge’s beneficiaries’ eligibility for either disability retirement pension benefit or a single, lump sum death benefit — whichever is greater.

### **SERVICE RETIREMENT**

**IF A JUDGE IS ELIGIBLE FOR A SERVICE RETIREMENT** — which is determined by the judge’s Tier, age and years of service in the retirement system — and the judge becomes permanently incapacitated, he or she may want to consider filing a Service Retirement application simulta-

neously with a Disability Retirement application. Depending on the judge's circumstances (age, service, tier level), a Service Retirement may produce a greater benefit than a Disability Retirement. Unlike Disability Retirement applications, however, Service Retirement applications, for judges under the age of 70, have a 30-day waiting period. Thus, a Service Retirement application will not be deemed filed and a judge will not be able to retire, until 30 days after receipt by the retirement system.

## **FILING RETIREMENT APPLICATIONS**

The timing of the filing of a retirement application is critical. In addition, proof of a judge's birth date, as well as the birth dates of beneficiaries, will be required before benefits are paid. A judge should forward a copy of the birth certificate along with the application, but should not delay filing of applications if proof of age is not immediately available.

**The retirement forms vary depending on the judge's Tier level. Judges seeking to obtain retirement forms should contact the Judiciary Benefits Office (518-285-8370) or the Office of Judicial Support (212-428-5558), to verify the judge's Tier level and ensure that the appropriate forms are provided.**

**Because time may be of the essence, it is recommended that a judge complete as much of the forms as possible in advance to facilitate the filing process.**

## **FILING AN APPLICATION FOR SERVICE RETIREMENT**

**FOR JUDGES UNDER THE AGE OF 70**, applications for Service Retirement must be filed with the Office of the State Comptroller at least 30 days but not more than 90 days before the date of retirement. Once a judge has filed for a Service Retirement and the retirement date passes, the judge is retired.

## **FILING AN APPLICATION FOR ORDINARY OR ACCIDENTAL DISABILITY RETIREMENT**

**A JUDGE MAY FILE AN APPLICATION FOR ORDINARY DISABILITY RETIREMENT**, or if the judge is unable to file the application, the person authorized with power of attorney for the judge may file the application. Applications for Ordinary Disability Retirement are considered filed when they are received by the retirement system. To meet any deadlines, the application should be faxed to the Office of the State Comptroller at 518-474-3091. Applications also can be mailed using "certified mail, return receipt requested." When using this method, the postmark date will serve as the filing date. Applications cannot be filed posthumously, so it is critical that the applications are timely received in the Office of the State Comptroller.

The application process for filing for an Accidental Disability Retirement is the same as for Ordinary Disability Retirement, but there may be different application forms to file depending upon the judge's Tier level.

## **SIMULTANEOUSLY FILING FOR SERVICE RETIREMENT AND ORDINARY OR ACCIDENTAL DISABILITY RETIREMENT**

**IF A JUDGE FILES A SERVICE RETIREMENT APPLICATION** along with a Disability Retirement application, once the service retirement date passes, the judge is retired. **A Service Retirement application may not be withdrawn after the effective date of retirement even if the disability retirement application has not been acted upon.** Note, however, that the retirement system will continue to process the disability retirement application and if it is approved the judge, or if the judge has died the judge's beneficiaries, will receive the greater of the two pension benefits.

## **RETIREMENT OPTION ELECTION**

**CHOOSING A RETIREMENT OPTION IS ONE OF THE DECISIONS A JUDGE MUST MAKE** when filing a retirement application that will directly impact the judge's beneficiaries. A judge selects a pension option by filing a Retirement Option Election form with the Retirement System. There are several options to choose. One option, the Single Life Allowance, provides the judge with the maximum monthly benefit upon retirement for the judge's lifetime. If, however, a judge selects the Single Life Allowance, the judge's beneficiaries will receive no pension benefit at the time of the judge's death. In addition, by law, if the judge does not file a Retirement Option Election form, the Retirement System must designate the Single Life Allowance option, which again, provides no direct pension benefit for the judge's beneficiaries.

Understanding the implications of selecting the Single Life Allowance option is critically important, particularly if a judge's goal is to ensure payment of a monthly pension benefit to the judge's beneficiaries after the judge's death. If a judge executes a Durable General Power of Attorney form, the judge should discuss this decision with the authorized agent designated in the form to be certain that the agent will make this time-sensitive, critical decision in accordance with the judge's wishes. ■



**DURABLE GENERAL POWER OF ATTORNEY**

**NEW YORK STATUTORY SHORT FORM**

**THE POWERS YOU GRANT BELOW CONTINUE TO BE EFFECTIVE  
SHOULD YOU BECOME DISABLED OR INCOMPETENT**

**Caution: This is an important document. It gives the person whom you designate (your "Agent") broad powers to handle your property during your lifetime, which may include powers to mortgage, sell, or otherwise dispose of any real or personal property without advance notice to you or approval by you. Then powers will continue to exist even after you become disabled or incompetent. These powers are explained more fully in New York General Obligations Law, Article 5, Title 15, Sections 5-1502A through 5-1503, which expressly permit the use of any other or different form of power of attorney.**

**This document does not authorize anyone to make medical or other health care decisions. You may execute a health care proxy to do this.**

**If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.**

THIS is intended to constitute a DURABLE GENERAL POWER OF ATTORNEY pursuant to Article 5, Title 15 of the New York General Obligations Law:

I, ..... do hereby appoint:  
*(insert your name and address)*

.....  
*(If one person is to be appointed agent, insert the name and address of your agent above)*

.....  
*(If two or more persons are to be appointed agents by you, insert their name and addresses above)*

my attorney(s)-in-fact TO ACT

*(If more than one agent is designated, CHOOSE ONE of the following two choices by putting your initials in ONE of the blank spaces to the left of your choice:)*

- Each agent may SEPARATELY act.
- All agents must act TOGETHER.

*(If neither blank space is initialed, the agents will be required to act TOGETHER)*

IN MY NAME, PLACE AND STEAD, in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:

**DIRECTIONS: Initial in the blank space to the left of your choice any one or more of the following lettered subdivisions as to which you WANT to give your agent authority. If the blank space to the left of any particular lettered subdivision is NOT initialed, NO**

**AUTHORITY WILL BE GRANTED for matters that are included in that subdivision. Alternatively, the letter corresponding to each power you wish to grant may be written or typed on the blank line in subdivision "(Q)", and you may then put your initials in the blank space to the left of subdivision "(Q)" in order to grant each of the powers so indicated.)**

- (A) real estate transactions;
- (B) chattel and goods transactions;
- (C) bond, share and commodity transactions;
- (D) banking transactions;
- (E) business operating transactions;
- (F) insurance transactions;
- (G) estate transactions;
- (H) claims and litigation;
- (I) personal relationships and affairs;
- (J) benefits from military service;
- (K) records, reports and statements;
- (L) retirement benefit transactions;
- (M) making gifts to my spouse, children and more remote descendants, and parents, not to exceed in the aggregate \$10,000 to each of such persons in any year;
- (N) tax matters;
- (O) all other matters;
- (P) full and unqualified authority to my attorney(s)-in-fact to delegate any or all of the foregoing powers to any person or persons whom my attorney(s)-in-fact shall select;
- (Q) each of the above matters identified by the following letters:  
.....  
.....

*(Special provisions and limitations may be included in the statutory short form durable power of attorney only if they conform to the requirements of 5-1503 of the New York General Obligations Law.)*

.....  
.....  
.....

This Durable Power of Attorney shall not be affected by my subsequent disability or incompetence.

If every agent named above is unable, or unwilling to serve, I appoint *(insert name and address of successor)* ..... to be my agent for all purposes hereunder

**To induce any third party to act hereunder, I hereby agree that any third party receiving a duly executed copy or facsimile of this instrument may act hereunder, and that revocation or termination hereof shall be ineffective as to such third party unless and until actual notice or knowledge of such revocation or termination shall have been received by such third party, and I for myself and for my heirs, executors, legal representatives and assigns, hereby agree to indemnify and hold harmless any such third party from and against any and all claims that may arise against such third party by reason of such third**

party having relied on the provisions of this instrument.

**This Durable General Power of Attorney may be revoked by me at any time.**

In Witness Whereof, I have hereunto signed my name this ..... day of ....., 200....

(YOU SIGN HERE:) →

\_\_\_\_\_  
*(Signature of Principal)*

**ACKNOWLEDGMENT**  
*(for use within the State of New York )*

STATE OF NEW YORK, COUNTY OF \_\_\_\_\_ ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public: State of New York

**ACKNOWLEDGMENT**  
*(for use outside the State of New York)*

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_ ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in

*(Insert city or political subdivision and state or county or other place acknowledgment taken).*

\_\_\_\_\_  
*(Signature and office of individual taking acknowledgment)*

