

**§ 135-63. Benefits on death before retirement.**

(a) Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a member in service, there shall be paid in a lump sum to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit equal to the sum of (i) the member's accumulated contributions, plus (ii) the member's final compensation; provided, however, that if the member has attained his or her fiftieth birthday with at least five years of membership service at the member's date of death, and if the designated recipient of the death benefits is the member's spouse who survives him or her, and if the spouse so elects, then the lump-sum death benefit provided for herein shall consist only of a payment equal to the member's final compensation and there shall be paid to the surviving spouse an annual retirement allowance, payable monthly, which shall commence on the first day of the calendar month coinciding with or next following the death of the member and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such retirement allowance shall be equal to one half of the amount of the retirement allowance to which the member would have been entitled had the member retired under the provisions of G.S. 135-57(a) on the first day of the calendar month coinciding with or next following the member's date of death, reduced by two percent (2%) thereof for each full year, if any, by which the age of the member at his or her date of death exceeds that of the member's spouse. If the retirement allowance to the spouse shall terminate on the remarriage or death of the spouse before the total of the retirement allowance payments made equals the amount of the member's accumulated contributions at date of death, the excess of such accumulated contributions over the total of the retirement allowances paid to the spouse shall be paid in a lump sum to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time such payment falls due, otherwise to the former member's legal representatives.

(b) There shall be paid to the surviving unremarried spouse of any former judge who died in service prior to January 1, 1974, and after his forty-ninth birthday an annual retirement allowance which shall commence on January 1, 1974, and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such retirement allowance shall be computed in accordance with the provisions of subsection (a) above as if the provisions of this Article had been in effect on the date of death of the former judge, and the final compensation of such former judge had been equal to the rate of annual compensation in effect on December 31, 1973, for the office held by the former judge at the time of his death.

(c) Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a member not in service, there shall be paid in a lump sum to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit equal to the member's accumulated contributions.

(d) Notwithstanding the provisions of G.S. 7A-376, there shall be paid to the surviving spouse of any former judge whose death occurred prior to July 1, 1983, who had not withdrawn his contributions pursuant to G.S. 135-62, an annual retirement allowance which shall commence on July 1, 1983, and shall be continued on the first day of each month thereafter until the death or remarriage of the spouse. If the spouse dies or remarries before the total of the retirement allowance paid equals the amount of the former judge's accumulated contributions, the excess of the accumulated contributions over the total of the retirement allowance paid to

the spouse shall be paid in a lump sum to the person the spouse has nominated by written designation duly acknowledged and filed with the Board of Trustees, if the person is living at the time the payment falls due, otherwise to the spouse's legal representative. The amount of any such retirement allowance shall be computed in accordance with the provisions of subsection (a) above. This subsection does not authorize allowances to surviving spouses of former judges convicted of crimes related to the performance of their judicial duties.

(e) For purposes of this subsection, a participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, shall be deemed to be "in service" until the last day of such service in the Uniformed Services. If the participant does not return immediately after that service to employment with a covered employer in this System, then the participant shall be deemed "in service" until the date on which the participant was first eligible to be separated or released from his or her involuntary military service. (1973, c. 640, s. 1; c. 1385; 1983, c. 761, ss. 231, 234; 2009-66, ss. 6(c), 11(a), (b); 2017-129, s. 3(c).)