

## BENCH CARD FOR JUDGES – SURVIVOR BENEFIT PLAN

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✓ <b>Issue</b>	<b>Comments</b>
Know the primary resources - statutes and rules <sup>1</sup> (as well as secondary sources)	Survivor Benefit Plan is at Ch. 73 of Title 10, U.S. Code. Regulations are at Dept. of Defense Financial Management Regulation (DoDFMR), Vol. 7b, Ch. 42 <i>et seq.</i> For SBP overview, go to <a href="https://militarypay.defense.gov/Benefits/Survivor-Benefit-Program/Overview/">https://militarypay.defense.gov/Benefits/Survivor-Benefit-Program/Overview/</a> and <a href="https://militarypay.defense.gov/benefits/survivor-benefit-program/">https://militarypay.defense.gov/benefits/survivor-benefit-program/</a> . Advantages, disadvantages are found at <a href="https://www.dfas.mil/RetiredMilitary/provide/sbp/advantages/">https://www.dfas.mil/RetiredMilitary/provide/sbp/advantages/</a> .
What is SBP?	SBP is an annuity that pays income to a designated beneficiary when servicemember (SM) or retiree dies first. Pension payments to former spouse [FS] stop at retiree's death. SBP pays 55% of selected base amount to the recipient upon death of the retiree. Payments are taxable income to beneficiary, adjusted by COLAs. Base amount may be full retired pay of the SM/retiree, or minimum of \$300/mo., or anything in between. FS SBP is not automatic; it must be elected; spouse coverage ends at divorce. Court can compel SM/retiree to elect former spouse for coverage in divorce proceedings.
What does it cost?	In retirement from active duty, FS coverage costs 6.5% of base amount, to be paid upon retirement by deduction from pension. For Guard/Reserve cases, premium is usually 7-10% of base.
Who pays the cost?	It's paid out of the retired pay as a deduction before division of the pension between the parties, so both parties wind up paying a portion of the premium... in same ratio as their shares of the military pension (e.g., if SGT John Doe is paying his ex-wife, Jane Doe, 30% of his pension, then she is bearing 30% of the cost of SBP, and John is paying 70% of the cost).
What if FS dies first?	In that case, the full pension is restored to the retiree.
Are SBP allocation and pension division linked?	No – the court can divide the pension and decline to allocate SBP coverage to the FS, or it can require SBP coverage but not divide the pension. SBP and pension division are covered in two separate sections of Title 10.

<sup>1</sup> For further information on SBP, see the Silent Partner infoletters at the website of the N.C. State Bar's military committee: [www.nclamp.gov](http://www.nclamp.gov) > Publications.

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	How can the court effectuate the election of FS SBP coverage?	Court may require the SM or retiree to elect the FS for former-spouse SBP coverage, and to accomplish the necessary follow-up paperwork. The clause in the order might read, “John Doe is ordered to elect his ex-wife, Jane Doe, immediately as his former-spouse SBP beneficiary, with his full retired pay as the base amount. The parties will both execute DD form 2656-1 within 30 days after the filing of this order, and Jane Doe’s lawyer will transmit that form promptly to the retired pay center <sup>2</sup> at the address shown on the form, along with a certified copy of this court order and the parties’ decree of divorce.”
	Can the FS make the election without signature of SM/retiree?	Yes. When court has ordered SBP coverage for FS, add this: “Jane Doe may transmit a signed copy of DD Form 2656-10, the <i>deemed election</i> form, to the retired pay center to ensure that she is registered for SBP coverage.”
	Can SBP be shared between current and former spouses?	No. SBP is a unitary benefit; it cannot be divided between a former and a current or future spouse.
	What coverage exists for those on active duty (A/D)?	Election – A/D: Spouse is automatically covered; at retirement SBP default is full coverage. If SM is married, spouse concurrence for any beneficiary other than spouse or spouse and child, and for anything less than full coverage.
	What about those in the Reserves or National Guard?	Election – Guard/Reserve: After 20 years of creditable Guard/Reserve service, SM can defer decision, opt for coverage at age 60, or select immediate coverage. The options are set out in the <u>Notice of Eligibility</u> (a/k/a the “20-year letter”) which SM receives after 20 years of service. The Guard/Reserve form to use, which also contains explanations, is DD Form 2656-5. The first two of these options require spouse concurrence.
	What are the deadlines for registering SBP paperwork at the retired pay center?	DD Form 2656-1 must be received by the ret’d pay center within one year from the divorce date. The pay center must receive DD Form 2656-10 within one year of date of the order requiring former-spouse SBP coverage. If deadlines are missed, the SM can still make a <i>voluntary election</i> for FS coverage when executing paperwork for retirement.

<sup>2</sup> For division of retired pay involving the Army, Navy, Air Force, Marine Corps and Space Force, retired pay center is Defense Finance and Accounting Service, or DFAS. Retired pay division for members of the Coast Guard and for commissioned officers in the Public Health Service and the National Oceanic and Atmospheric Administration is handled by the Coast Guard Pay & Personnel Center.

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	Is SBP really a good deal?	SBP is generally a good plan, but there are some situations in which it may not be the most economical option for a death benefit. For example, the minimum SBP premium for base amt. of \$300 is cheaper than almost every private insurance program, although it only pays \$165/mo. benefit. With larger base amounts, SBP coverage is probably much more expensive than commercial insurance. But SBP is a lifetime annuity and it will never become “too expensive,” as might be the case with life insurance and rising premiums.
	<b>Q4C</b>	<b>QUESTIONS FOR COURT</b>
	Q4C: What can judge do to make the FS bear the entire cost of SBP coverage?	Ret’d pay center will not shift the premium to get either party to pay for SBP. Court can order FS to reimburse SM/retiree monthly or quarterly for the cost, or else court can order that share of the pension payable to FS be reduced to account for her/his bearing full cost of SBP. The math for cost-shifting is complicated; don’t just shave off 6.5% (or 7-10% in Guard/Reserve case) from the former spouse’s share. See the SILENT PARTNER, “Military Pension Division – The Servicemember’s Strategy” for cost-shifting details.
	Q4C: What if the SBP beneficiary remarries?	If the former spouse is beneficiary and remarriage is before FS turns 55, then payments are suspended for duration of that remarriage; they can be resumed if the remarriage ends in divorce, death or annulment.
	Q4C: What about valuation of SBP – is that an option?	A financial expert (e.g., CPA, actuary or economist) can value the Survivor Benefit Plan. The court would then put the entire value of the SBP on the FS’s side of the ledger, since there cannot be two adult beneficiaries for SBP.
	Q4C: When might the judge decline to award SBP to the FS?	If the FS is somewhat older than the SM/retiree, she or he might not survive the SM/retiree, and the money might be considered as wasted when the FS will likely be the one to die first. SBP is expensive.
	Q4C: What about another scenario for NO SBP?	Commercial life insurance may provide better or cheaper protection for a younger surviving spouse. Suppose adequate life insurance already exists to take care of the FS if the SM/retiree is first to die; in such a situation, it might not make sense to have SBP coverage and also adequate life insurance.
	Q4C: What if there’s no divisible retired pay? Does that mean no SBP?	There might be no divisible ret’d pay if the SM/retiree has elected CRSC (Combat-Related Special Compensation) or has been separated with a medical retirement, but this does not affect the existence of SBP or the court’s power to allocate this death benefit to the FS.
	Q4C: What factors favor award of SBP to the FS?	SBP might be important when the FS is younger than the SM/retiree, or when the SM/retiree has disabilities which indicate a shorter life expectancy.

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	Q4C: Who can explain all of this in an intelligible way to the judge?	Consider appointment of expert for testimony as court's own witness (e.g., a retired military attorney, or a Reserve or National Guard JAG officer).