

Article 6.

Retirement of Justices and Judges of the Appellate Division; Retirement Compensation; Recall to Emergency Service; Disability Retirement.

§ 7A-39.1. Justice, emergency justice, judge and emergency judge defined.

(a) As herein used "justice of the Supreme Court" includes the Chief Justice of the Supreme Court and "judge of the Court of Appeals" includes the Chief Judge of the Court of Appeals, unless the context clearly indicates a contrary intent.

(b) As used herein, "emergency justice", "emergency judge", or "emergency recall judge" means any justice of the Supreme Court or any judge of the Court of Appeals, respectively, who has retired subject to recall for temporary service. (1967, c. 108, s. 1; 1985, c. 698, s. 16(a); 1995, c. 108, s. 2.)

§ 7A-39.2. Age and service requirements for retirement of justices of the Supreme Court and judges of the Court of Appeals.

(a) Any justice of the Supreme Court or judge of the Court of Appeals who has attained the age of 65 years, and who has served for a total of 15 years, whether consecutive or not, on the Supreme Court, the Court of Appeals, or the superior court, or as Administrative Officer of the Courts, or in any combination of these offices, may retire from his present office and receive for life compensation equal to two thirds of the total annual compensation, including longevity, but excluding any payments in the nature of reimbursement for expenses, from time to time received by the occupant or occupants of the office from which he retired.

(b) Any justice of the Supreme Court or judge of the Court of Appeals who has attained the age of 65 years, and who has served as justice or judge, or both, in the Appellate Division for 12 consecutive years may retire and receive for life compensation equal to two thirds of the total annual compensation, including longevity, but excluding any payments in the nature of reimbursement for expenses, from time to time received by the occupant or occupants of the office from which he retired.

(c) Any justice or judge of the Appellate Division, who has served for a total of 24 years, whether continuously or not, as justice of the Supreme Court, judge of the Court of Appeals, judge of the superior court, or Administrative Officer of the Courts, or in any combination of these offices, may retire, regardless of age, and receive for life compensation equal to two thirds of the total annual compensation, including longevity, but excluding any payments in the nature of reimbursement for expenses, from time to time received by the occupant or occupants of the office from which he retired. In determining eligibility for retirement under this subsection, time served as a district solicitor of the superior court prior to January 1, 1971, may be included, provided the person has served at least eight years as a justice, judge, or Administrative Officer of the Courts, or in any combination of these offices.

(d) For purposes of this section, the "occupant or occupants of the office from which" the retired judge retired will be deemed to be a judge or justice of the Appellate Division holding the same office and with the same service as the retired judge had immediately prior to retirement. (1967, c. 108, s. 1; 1971, c. 508, s. 2; 1983 (Reg. Sess., 1984), c. 1109, ss. 13.6-13.9.)

§ 7A-39.3. Retired justices and judges may become emergency justices and judges subject to recall to active service; compensation for emergency justices and judges on recall.

(a) Justices of the Supreme Court and judges of the Court of Appeals who have not reached the mandatory retirement age specified in G.S. 7A-4.20, but who have retired under the provisions

of G.S. 7A-39.2, or under the Uniform Judicial Retirement Act after having completed 12 years of creditable service, may apply as provided in G.S. 7A-39.6 to become emergency justices or judges and upon being commissioned as an emergency justice or emergency judge shall be subject to temporary recall to active service in place of a justice or judge who is temporarily incapacitated as provided in G.S. 7A-39.5.

(b) In addition to the compensation or retirement allowance he would otherwise be entitled to receive by law, each emergency justice or emergency judge recalled for temporary active service shall be paid by the State his actual expenses, plus three hundred dollars (\$300.00) for each day of active service rendered upon recall. No recalled retired or emergency justice or judge shall receive from the State total annual compensation for judicial services in excess of that received by an active justice or judge of the bench to which the justice or judge is being recalled. (1967, c. 108, s. 1; 1973, c. 640, s. 3; 1977, c. 736, s. 1; 1979, c. 884, s. 1; 1981, c. 455, s. 3; c. 859, s. 46; 1981 (Reg. Sess., 1982), c. 1253, s. 2; 1983, c. 784; 1985, c. 698, ss. 9(a), 16(b); 1987 (Reg. Sess., 1988), c. 1086, s. 31(a); 2002-159, s. 25.)

§ 7A-39.4. Retirement creates vacancy.

The retirement of any justice of the Supreme Court or any judge of the Court of Appeals under the provisions of this Article shall create a vacancy in his office to be filled as provided by law. (1967, c. 108, s. 1.)

§ 7A-39.5. Recall of emergency justice or emergency judge upon temporary incapacity of a justice or judge.

(a) Upon the request of any justice of the Supreme Court who has been advised in writing by a reputable and competent physician that he is temporarily incapable of performing efficiently and promptly all the duties of his office, the Chief Justice may recall any emergency justice who, in his opinion, is competent to perform the duties of an associate justice, to serve temporarily in the place of the justice in whose behalf he is recalled; provided, that when the incapacity of a justice of the Supreme Court is such that he cannot request the recall of an emergency justice to serve in his place, an order of recall may be issued by the Chief Justice upon satisfactory medical proof of the facts upon which the order of recall must be based. Orders of recall shall be in writing and entered upon the minutes of the court.

(b) Upon the request of any judge of the Court of Appeals who has been advised in writing by a reputable and competent physician that he is temporarily incapable of performing efficiently and promptly all the duties of his office, the Chief Judge may recall any emergency judge who, in his opinion, is competent to perform the duties of a judge of the Court of Appeals, to serve temporarily in the place of the judge in whose behalf he is recalled; provided, that when the incapacity of a judge of the Court of Appeals is such that he cannot request the recall of an emergency judge to serve in his place, an order of recall may be issued by the Chief Judge upon satisfactory medical proof of the facts upon which the order of recall must be based. If the Chief Judge does not recall an emergency judge to serve in the place of the temporarily incapacitated judge, the Chief Justice may recall an emergency justice who, in his opinion, is competent to perform the duties of a judge of the Court of Appeals, to serve temporarily in the place of the judge in whose behalf he is recalled. In no case, however, may more than one emergency justice or emergency judge serve on one panel of the Court of Appeals at any given time. Orders of recall shall be in writing and entered upon the minutes of the court. (1967, c. 108, s. 1; 1985, c. 698, s. 16(c).)

§ 7A-39.6. Application to the Governor; commission as emergency justice or emergency judge.

No retired justice of the Supreme Court or retired judge of the Court of Appeals may become an emergency justice or emergency judge except upon his written application to the Governor certifying his desire and ability to serve as an emergency justice or emergency judge. If the Governor is satisfied that the applicant qualifies under G.S. 7A-39.3(a) to become an emergency justice or emergency judge and that he is physically and mentally able to perform the official duties of an emergency justice or emergency judge, he shall issue to such applicant a commission as an emergency justice or emergency judge of the court from which he retired. The commission shall be effective upon the date of its issue and shall terminate when the judge to whom it is issued reaches the maximum age for judicial service under G.S. 7A-4.20(a). (1967, c. 108, s. 1; 1977, c. 736, s. 2; 1979, c. 884, s. 2.)

§ 7A-39.7. Jurisdiction and authority of emergency justices and emergency judges.

An emergency justice or emergency judge shall not have or possess any jurisdiction or authority to hear arguments or participate in the consideration and decision of any cause or perform any other duty or function of a justice of the Supreme Court or judge of the Court of Appeals, respectively, except while serving under an order of recall and in respect to appeals, motions, and other matters heard, considered, and decided by the court during the period of his temporary service under such order; and the justice of the Supreme Court or judge of the Court of Appeals in whose behalf an emergency justice or emergency judge is recalled to active service shall be disqualified to participate in the consideration and decision of any question presented to the court by appeal, motion or otherwise in which any emergency justice or emergency judge recalled in his behalf participated. (1967, c. 108, s. 1.)

§ 7A-39.8. Court authorized to adopt rules.

The Supreme Court shall prescribe rules respecting the filing of opinions prepared by an emergency justice or an emergency judge after his period of temporary service has expired, and any other matter deemed necessary and consistent with the provisions of this Article. (1967, c. 108, s. 1.)

§ 7A-39.9. Chief Justice and Chief Judge may recall and terminate recall of justices and judges; procedure when Chief Justice or Chief Judge incapacitated.

(a) Decisions of the Chief Justice and the Chief Judge regarding recall of emergency justices and emergency judges, when not in conflict with the provisions of this Article, are final.

(b) The Chief Justice or Chief Judge, may, at any time, in his discretion, cancel any order of recall issued by him or fix the termination date thereof.

(c) Whenever the Chief Justice is the justice in whose behalf an emergency justice is recalled to temporary service, the powers vested in him as Chief Justice by this article shall be exercised by the associate justice senior in point of time served on the Supreme Court. Whenever the Chief Judge is the judge in whose behalf an emergency judge or justice is recalled to temporary service the powers vested in him as Chief Judge by this article shall be exercised by the associate judge senior in point of time served on the Court of Appeals. If two or more judges have served the same length of time on the Court of Appeals, the eldest shall be deemed the senior judge. (1967, c. 108, s. 1; 1985, c. 698, s. 16(d), (e).)

§ 7A-39.10. Article applicable to previously retired justices.

All provisions of this Article shall apply to every justice of the Supreme Court who has heretofore retired and is receiving compensation as an emergency justice. (1967, c. 108, s. 1.)

§ 7A-39.11. Retirement on account of total and permanent disability.

Every justice of the Supreme Court or judge of the Court of Appeals who has served for eight years or more on the Supreme Court, the Court of Appeals, or the superior court, or as Administrative Officer of the Courts, or in any combination of these offices, and who while in active service becomes totally and permanently disabled so as to be unable to perform efficiently the duties of his office, and who retires by reason of such disability, shall receive for life compensation equal to two thirds of the annual salary from time to time received by the occupant or occupants of the office from which he retired. In determining whether a judge is eligible for retirement under this section, time served as district solicitor of the superior court prior to January 1, 1971, may be included. Whenever any justice or judge claims retirement benefits under this section on account of total and permanent disability, the Governor and Council of State, acting together, shall, after notice and an opportunity to be heard is given the applicant, by a majority vote of said body, make findings of fact from the evidence offered. Such findings of fact shall be reduced to writing and entered upon the minutes of the Council of State. The findings so made shall be conclusive as to such matters and determine the right of the applicant to retirement benefits under this section. Justices and judges retired under the provisions of this section are not subject to recall as emergency justices or judges. (1967, c. 108, s. 1.)

§ 7A-39.12. Applicability of §§ 7A-39.2 and 7A-39.11.

The provisions of G.S. 7A-39.2 and 7A-39.11 shall apply only to justices and judges who entered into office prior to January 1, 1974. The extent of such application is specified in Chapter 135, Article 4 (Uniform Judicial Retirement Act). (1973, c. 640, s. 5.)

§ 7A-39.13. Recall of active and emergency justices and judges who have reached mandatory retirement age.

Justices and judges retired because they have reached the mandatory retirement age, and emergency justices and judges whose commissions have expired because they have reached the mandatory retirement age, may be temporarily recalled to active service under the following circumstances:

- (1) The justice or judge must consent to the recall.
- (2) The Chief Justice may recall retired justices to serve on the Supreme Court or on the Court of Appeals, and the Chief Judge may recall retired judges of the Court of Appeals to serve on that court.
- (3) The period of recall shall not exceed six months, but it may be renewed for an additional six months if the emergency for which the recall was ordered continues.
- (4) Prior to recall, the Chief Justice or the Chief Judge, as the case may be, shall satisfy himself that the justice or judge being recalled is capable of efficiently and promptly performing the duties of the office to which recalled.
- (5) Recall is authorized only to replace an active justice or judge who is temporarily incapacitated.
- (6) Jurisdiction and authority of a recalled justice or judge is as specified in G.S. 7A-39.7.

- (7) The Supreme Court and the Court of Appeals, as the case may be, shall prescribe rules respecting the filing of opinions prepared by a retired justice or judge after his period of temporary service has expired, and respecting any other matter deemed necessary and consistent with this section.
- (8) Compensation of recalled retired justices and judges is the same as for recalled emergency justices and judges under G.S. 7A-39.3(b).
- (9) Recall shall be evidenced by a commission signed by the Chief Justice or Chief Judge, as the case may be. (1981, c. 455, s. 2; 1985, c. 698, s. 16(f).)

§ 7A-39.14. Recall by Chief Justice of retired or emergency justices or judges for temporary vacancy.

(a) In addition to the authority granted to the Chief Justice under G.S. 7A-39.5 to recall emergency justices and under G.S. 7A-39.13 to recall retired justices, the Chief Justice may recall not more than one retired or emergency justice or retired emergency judge of the Court of Appeals, including an emergency justice or judge whose commission has expired because he has reached the mandatory retirement age, in the following circumstances:

- (1) If a vacancy exists on the Supreme Court, he may recall an emergency or retired justice to serve on that court until the vacancy is filled in accordance with law.
- (2) If a vacancy exists on the Court of Appeals, he may recall an emergency or retired justice of the Supreme Court or judge of the Court of Appeals to serve on the Court of Appeals until the vacancy is filled in accordance with law.
- (3) With the concurrence of a majority of the Supreme Court, he may recall an emergency or retired justice to serve on the Supreme Court in place of a sitting justice who, as determined by the Chief Justice, is temporarily unable to perform all of the duties of his office.
- (4) With the concurrence of a majority of the Supreme Court, he may recall an emergency or retired justice of the Supreme Court or judge of the Court of Appeals to serve on the Court of Appeals in place of a sitting judge who, as determined by the Chief Justice, is temporarily unable to perform all of the duties of his office.

(b) No judge or justice may be recalled unless he consents to the recall. Orders of recall issued pursuant to this section must be in writing and entered on the minutes of the court. In addition, if the judge or justice is recalled pursuant to subdivision (a)(3) or (a)(4), the order shall contain a finding by the Chief Justice setting out, in detail, the reason for the recall.

(c) A judge or justice recalled pursuant to subdivision (a)(1) or (a)(2) of this section:

- (1) Has the same authority and jurisdiction granted to emergency justices and judges under G.S. 7A-39.7;
- (2) Is subject to rules adopted pursuant to G.S. 7A-39.8 regarding filing of opinions and other matters; and
- (3) Is compensated as are other retired or emergency justices or judges recalled for service pursuant to G.S. 7A-39.5 or G.S. 7A-39.13.

(d) A judge or justice recalled pursuant to subdivision (a)(3) or (a)(4) of this section:

- (1) Has the same authority and jurisdiction granted to emergency justices and judges under G.S. 7A-39.7;
- (2) Is subject to rules adopted pursuant to G.S. 7A-39.8 regarding filing of opinions and other matters;

- (3) May, after the return of the judge or justice in whose place he was sitting, complete the duties assigned to him before the return of that judge or justice; and
- (4) Is compensated as are other retired or emergency justices or judges recalled for service pursuant to G.S. 7A-39.5 or G.S. 7A-39.13.

(e) A retired or emergency justice or judge may serve on the Supreme Court or Court of Appeals pursuant to subdivision (a)(3) or (a)(4) only if he is recalled to serve temporarily in place of a sitting justice or judge who is not temporarily incapacitated under circumstances that would permit temporary service of the retired or emergency justice or judge pursuant to G.S. 7A-39.5 or G.S. 7A-39.13. This section does not authorize more than seven justices to serve on the Supreme Court at any given time, nor does it authorize more than 15 justices and judges to serve on the Court of Appeals at any given time. In no case may more than one emergency justice or emergency judge serve on one panel of the Court of Appeals at any given time.

(f) Repealed by Session Laws 1989, c. 795, s. 27.1. (1985, c. 698, s. 15(a), (b); 1985 (Reg. Sess., 1986), c. 851, s. 3; c. 1014, s. 225; 1987, c. 703, s. 5; c. 738, ss. 131(a), (b); 1989, c. 795, s. 27.1; 2009-570, s. 1.)

§ 7A-39.15. Emergency recall judges of the Court of Appeals.

(a) A retired justice or judge of the Appellate Division of the General Court of Justice is eligible to be appointed as an emergency recall judge of the Court of Appeals under the following circumstances:

- (1) The justice or judge has retired under the provisions of the Consolidated Judicial Retirement Act, Article 4 of Chapter 135 of the General Statutes, or is eligible to receive a retirement allowance under that act;
- (2) The justice or judge has not reached the mandatory retirement age specified in G.S. 7A-4.20;
- (3) The justice or judge has served a total of at least five years as a judge or justice of the General Court of Justice, provided that at least six months was served in the Appellate Division, whether or not otherwise eligible to serve as an emergency justice or judge of the Appellate Division of the General Court of Justice;
- (4) The judicial service of the justice or judge ended within the preceding 15 years; and
- (5) The justice or judge has applied to the Governor for appointment as an emergency recall judge of the Court of Appeals in the same manner as is provided for application in G.S. 7A-53. If the Governor is satisfied that the applicant meets the requirements of this section and is physically and mentally able to perform the duties of a judge of the Court of Appeals, the Governor shall issue a commission appointing the applicant as an emergency recall judge of the Court of Appeals until the applicant reaches the mandatory retirement age for judges of the Court of Appeals specified in G.S. 7A-4.20.

Any former justice or judge of the Appellate Division of the General Court of Justice who otherwise meets the requirements of this section to be appointed an emergency recall judge of the Court of Appeals, but who has already reached the mandatory retirement age for judges of the Court of Appeals set forth in G.S. 7A-4.20, may apply to the Governor to be appointed as an emergency recall judge of the Court of Appeals as provided in this section. If the Governor issues a

commission to the applicant, the retired justice or judge is subject to recall as an emergency recall judge of the Court of Appeals as provided in this section.

(b) Notwithstanding any other provision of law, the Chief Judge of the Court of Appeals may recall and assign one or more emergency recall judges of the Court of Appeals, not to exceed three at any one time, provided funds are available, if the Chief Judge determines that one or more emergency recall judges of the Court of Appeals are necessary to discharge the court's business expeditiously.

(c) Any emergency recall judge of the Court of Appeals appointed as provided in this section shall be subject to recall in the following manner:

- (1) The judge shall consent to the recall;
- (2) The Chief Judge of the Court of Appeals may order the recall;
- (3) Prior to ordering recall, the Chief Judge of the Court of Appeals shall be satisfied that the recalled judge is capable of efficiently and promptly discharging the duties of the office to which recalled;
- (4) Orders of recall and assignment shall be in writing, evidenced by a commission signed by the Chief Judge of the Court of Appeals, and entered upon the minutes of the permanent records of the Court of Appeals;
- (5) Compensation, expenses, and allowances of emergency recall judges of the Court of Appeals are the same as for recalled emergency superior court judges under G.S. 7A-52(b);
- (6) Emergency recall judges assigned under those provisions shall have the same powers and duties, when duly assigned to hold court, as provided for by law for judges of the Court of Appeals;
- (7) Emergency recall judges of the Court of Appeals are subject to assignment in the same manner as provided for by G.S. 7A-16 and G.S. 7A-19;
- (8) Emergency recall judges of the Court of Appeals shall be subject to rules adopted pursuant to G.S. 7A-39.8 regarding the filing of opinions and other matters;
- (9) Emergency recall judges of the Court of Appeals shall be subject to the provisions and requirements of the Canons of Judicial Conduct during the term of assignment; and
- (10) An emergency recall judge of the Court of Appeals shall not engage in the practice of law during any period for which the emergency recall Court of Appeals judgeship is commissioned. However, this subdivision shall not be construed to prohibit an emergency recall judge of the Court of Appeals appointed pursuant to this section from serving as a referee, arbitrator, or mediator during service as an emergency recall judge of the Court of Appeals so long as the service does not conflict with or interfere with the judge's service as an emergency recall judge of the Court of Appeals.

(d) A justice or judge commissioned as an emergency recall judge of the Court of Appeals is also eligible to receive a commission as an emergency special superior court judge. However, no justice or judge who has been recalled as provided in this section shall, during the period so recalled and assigned, contemporaneously serve as an emergency special superior court judge or emergency justice of the General Court of Justice. (1995, c. 108, s. 1.)