

**§ 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).)