

**IN THE SUPERIOR COURTS
MOUNTAIN JUDICIAL CIRCUIT
STATE OF GEORGIA**

**IN RE: Declaration of *
Judicial Emergency * Standing Order of the Courts
*
Date: April 6, 2020 *

**SECOND AMENDMENT TO ORDER
DECLARING JUDICIAL EMERGENCY**

WHEREAS, pursuant to Declarations of Public Health Emergency by the President of the United States and the Governor and a Declaration of Judicial Emergency issued by the Chief Justice of the Georgia Supreme Court, the Superior Court Judges of the Mountain Judicial Circuit issued a Declaration of Judicial Emergency applicable to all counties and courts of the Mountain Judicial Circuit which was thereafter amended.

WHEREAS, the Governor has issued a Statewide “Shelter in Place Order” effective on April 3, 2020, there are now confirmed cases of individuals infected with the Coronavirus (Covid-19) in each of the counties of the Circuit, and it has been established that infected individuals may be contagious before they exhibit any symptoms.

Therefore, pursuant to O.C.G.A. § 38-3-61 and the authority provided by Order of the Georgia Supreme Court of Georgia dated March 27, 2020, clarifying and/or amending Uniform Superior Court Rules 9.1 and 9.2 relating to telephone and video conferences, Chief Judge Russell W. Smith and Judge B. Chan Caudell of the Mountain Judicial Circuit, Superior Courts of Habersham, Rabun, and Stephens Counties **DO HEREBY AMEND** the prior Declarations and Orders entered on

March 14 and March 24, 2020 as follows:

I. APPLICABLE TO ALL COURTS

The provisions of this order shall be applicable to all Superior, State, Juvenile, Magistrate, Probate and Municipal courts in the Mountain Judicial Circuit.

II. PROCEEDINGS TO BE HELD ONLINE

For so long as there is an Order of Judicial Emergency in effect (currently through April 13, 2020), every effort should be taken to ensure that all civil and criminal courtroom proceedings take place through remote video conference as follows:

- A. Each Judge shall select an online platform such as *Microsoft Teams*, *Webex* or *Zoom* on which court proceedings may take place.
- B. The attorneys and litigants participating online by personal computer or smartphone through the selected platform and must, at all times, be able to hear the other participants, the Court, and any witnesses. The participants shall also have access to video to the extent feasible.
- C. Attorneys and their clients must be able to communicate privately during the proceedings both orally and in writing either through a private meeting function on the platform application, by muting the other participants, or by private text or cell-phone conversation. The Court may grant reasonable breaks to permit the attorneys to speak privately to their clients.
- D. The oath may be administered to witnesses by the Court Reporter, the Court, or the attorney calling the witness. A witness sworn online will be considered for all purposes as the oath having been administered in

person.

- E. In courts of record, a court reporter may be present in the courtroom with the judge or online with access to the audio and, if possible, video for any proceedings for which a record is required to be made and shall be available on request in civil proceedings.
- F. Documentary exhibits shall, if possible, be individually labeled and scanned prior to the hearing so that they may be uploaded and viewed by the parties and the Court. If a document is admitted in evidence, the Court Reporter shall save or print the exhibit for inclusion in the record.
- G. In order to ensure that all proceedings are open to the public as required by law:
 - i. Each daily court session (or each proceeding, depending on the application or platform used) shall be assigned a link by which any member of the public may listen to and/or view the entirety of the proceedings by joining the “meeting” as an observer or “webinar” participant.
 - ii. Notice that the proceedings will be held online shall be posted on the websites of each County, each Clerk of Court, and the Council of Superior Court Judges and shall also be distributed to the media, along with a notice that anyone who wishes to attend should contact the office of the Clerk or the office of the assigned judge for the link to be used to access the particular court session or proceeding.
 - iii. If the number of persons seeking to attend a virtual proceeding

exceeds the limit permitted by the platform or application (e.g. 250 on Microsoft Teams), the proceedings shall be continued until the first available date following the expiration of the emergency order or until arrangements can be made for the proceedings to be live-streamed so that they may be viewed by an unlimited number of persons, whichever first occurs.

- iv. There shall be made available in each courthouse at least two (2) computers (with a webcam, if possible) for use by litigants. Each such computer shall be maintained in a separate room in the courthouse so as to avoid any contact between litigants, particularly in proceedings under the Family Violence Act.
- v. All proceedings shall be subject to the provisions of O.C.G.A. § 15-1.10.1 and Uniform Superior Court Rule 22 (or the applicable rule of any other court). Therefore, the proceedings may not be recorded except in accordance with the rules of court. Attorneys and unrepresented parties may record the proceedings after giving notice to the Court. Members of the public may only record after making a request and being granted permission to record pursuant to the rule. The Court Reporter's transcript shall remain the sole official record of the proceedings.
- vi. The outgoing sound or voice for members of the public observing proceedings shall be muted and they shall not speak or use any messaging feature of the application to communicate publicly or privately with the Court, the litigants, or the attorneys. This shall

not prohibit private communications between the attorneys and their clients or staff.

Members of the public observing the proceedings shall not “unmute” themselves so that they can be heard, nor shall they speak or otherwise disrupt the proceedings.

Attorneys, parties and observers in any online proceeding are expected to behave as they would in a courtroom. Any person who disrupts a proceeding shall be subject to removal from the proceedings. A person who seriously or repeatedly disrupts proceedings, thereby interfering in the administration of justice shall be subject to the contempt power of the court.

- vii. In the event that an attorney or party believes that a proceeding cannot effectively be heard or presented in the manner required, they may move the assigned judge for an order waiving the requirements of this rule. The assigned Judge may also waive these provisions, *sua sponte*, as to a particular matter or proceeding. If such a waiver is granted, the provisions of the prior Amended Order regarding courtroom proceedings shall apply as well as any other conditions imposed by the assigned judge.

III. LOCATION OF PROCEEDINGS

Pursuant to the Order of the Georgia Supreme Court of Georgia dated March 27, 2020, for the duration of the Judicial Emergency, Uniform Superior Court Rules 9.2 was clarified and/or amended so as to provide that it is no longer required that the public have access “...to the location where the judge is presiding over a video

conference...”

As a result of the existing emergency, Sheriff's Department Personnel ordinarily assigned to courtroom security may be needed for other duties. Pursuant to O.C.G.A. § 38-1-61 (c), the undersigned Chief Judge does hereby find that the existing circumstances make access to the courtroom of each courthouse temporarily impractical. It is therefore, ORDERED, that a judge presiding over a matter by videoconference may do so from any convenient location, including their private residence or office, provided that, in all criminal cases, they shall do so from a location within the county where the action is pending (preferably the courthouse), unless there is an express waiver on the record of this requirement by all parties.

IV. FILING OF PLEADINGS IN CRIMINAL MATTERS

- A. For the duration of the Judicial Emergency, attorneys may file motions, entries of appearance and any other pleadings in criminal cases by sending the document to the Clerk of Court by email in PDF format. The Clerk shall accept such documents for filing. All such documents shall otherwise comply with the Uniform Superior Court Rules (or the applicable rules of any other court) regarding, for example, signature and certificate of service.
- B. Further provided, however, that once the Clerk of Court has established e-filing in criminal cases through a secure service such as PeachCourt, any and all filings must be made through via that system and the provisions of paragraph A, above, shall no longer apply.

V. AUTOMATIC EXTENSION

This order shall be effective through and until 11:59 P.M. on the 13th day of April, 2020, but in the event that the Declaration of Statewide Judicial Emergency of the

Chief Justice is extended, this order, as well as the Court's prior orders regarding the Declaration of Circuit Judicial Emergency, shall likewise be automatically extended for the duration of the Statewide Judicial Emergency.

IT IS FURTHER **ORDERED** that the Sheriffs of Habersham County, Rabun County, and Stephens County shall post this Order on their public notification site and in the courthouse;

IT IS FURTHER **ORDERED** that the undersigned shall immediately notify and serve Chief Justice Harold D. Melton of the Supreme Court of Georgia with a copy of this Order, such service to be accomplished via email to Tee Barnes, the Clerk of the Supreme Court of Georgia, at barnest@gasupreme.us;

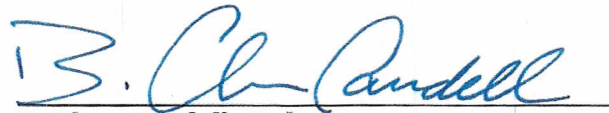
IT IS FURTHER **ORDERED** that the undersigned shall immediately notify and serve a copy of the order on the judges and clerks of all courts sitting within the jurisdictions affected and on the clerks of the Georgia Court of Appeals and the Georgia Supreme Court, such service to be accomplished through reasonable means to assure expeditious receipt; and

IT IS FURTHER **ORDERED** that the undersigned shall give notice of the issuance of this Order to the affected parties, counsel for the affected parties, and the public.

SO ORDERED this 6th day of April 2020 at 12:00 p.m. in Toccoa,
Stephens County, Georgia.



Russell W. Smith, Chief Judge
Superior Courts
Mountain Judicial Circuit



B. Chan Caudell, Judge
Superior Courts
Mountain Judicial Circuit