

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

|               |  |             |                                     |
|---------------|--|-------------|-------------------------------------|
| <b>IN RE:</b> | <b>Declaration of<br/>Judicial Emergency</b> | *<br>*<br>* | <b>Standing Order of the Courts</b> |
| <b>Date:</b>  | <b>April 6, 2020</b>                         | *<br>*      |                                     |

**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 13<sup>th</sup> 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](mailto:barnest@gasupreme.us);

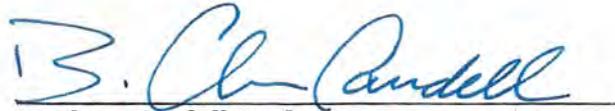
**IT IS FURTHER ORDERED** that the undersigned shall immediately notify and serve a copy of the order on the judges and clerks of all courts sitting within the jurisdictions affected and on the clerks of the Georgia Court of Appeals and the Georgia Supreme Court, such service to be accomplished through 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 6<sup>th</sup> 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

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

**IN RE: Declaration of \*  
Judicial Emergency \* Standing Order of the Courts  
\*  
Date: March 24, 2020 \*  
\***

**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.

**WHEREAS**, the Judges of the Mountain Judicial Circuit having determined that specific provision should be made for the manner of conduct of court business so as to limit to the extent possible the possibility of transmission of the COVID-19 Virus in accordance with the recommendations of public health authorities, including the Centers for Disease Control published guidelines.

**Therefore**, pursuant to O.C.G.A. § 38-3-61, 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 Declaration and Order entered on March 14, 2020, by adding the following:

1. With regard to both civil and criminal courtroom proceedings:
  - a) All persons shall wash their hands with soap and water immediately prior to entering the courtroom. If hand-washing stations are available

outside the courthouse, they shall be used prior to entry into the courthouse.

- b) Litigants, attorneys and Court personnel may wear gloves and/or a facemask in the courtroom if they wish to do so.
- c) With respect to the District Attorney and the Public Defender, only the attorney responsible for the matter before the Court and one other staff member (whether attorney or non-attorney) may be present in the courtroom at any given time. Likewise any private attorney appearing in a civil or criminal matter may have the lead counsel and one other staff person (whether attorney or non-attorney) in the courtroom at any one time.
- d) Only the Department of Community Supervision officer responsible for the matter before the court shall be present in the courtroom at any given time.
- e) All persons in attendance shall, to the extent possible sit or stand at least six feet in each direction from each other person in the courtroom.
- f) Any witnesses shall testify from a location other than the current location of the witness box which, in each county, is located much closer than the recommended safe distance to the Court Reporter. For example, the witness may testify from their seat in the courtroom (if the rule of sequestration has not been invoked), from an appropriate location in the jury box, or in another location where a seat may be positioned for them.
- g) Attorneys shall not be permitted to approach a witness who is testifying.

- h) To the extent practicable, attorneys shall have any documents that they intend to tender into evidence marked and scanned in PDF format so that they can be shared and displayed without the necessity of passing the documents between the attorneys and the court. If a document is admitted into evidence, a scanned copy will be printed out by the reporter for inclusion with the record.
- i) Hand Sanitizer shall be available at each counsel table.
- j) With notice and approval of the court, family members, friends or interested members of the public may designate someone present in the courtroom to broadcast the proceedings to them by phone or video.
- k) Any party, attorney or witness may appear in court via videoconference (e.g. Skype or the like) or telephone upon request, including any person required to “shelter in place” by virtue of the Order of the Governor. Persons who would be considered to be in a “high-risk” category if they contract the virus (persons more than 60 years of age or with certain pre-existing medical condition are encouraged to do so.
- l) All persons who intend to enter a courtroom and attend any proceeding, including parties, attorneys, witnesses and any other persons shall contact the office of the clerk or the assigned judge (or if they have not had notice of this order before appearing at the courthouse, they shall notify the security officer stationed at the courthouse entrance) if:
  - i. They are now or have in the 14 previous days experienced any symptoms of illness, even mild symptoms.
  - ii. They have had contact with any Coronavirus (COVID-19) positive

individual.

- iii. If they or someone with whom they have had contact has been in any of the following countries or regions within the last 14 days: STATE OF WASHINGTON, NEW ROCHELLE, NEW YORK, CHINA, SOUTH KOREA, JAPAN, ITALY, IRAN, and/or EGYPT.
- iv. If they have been advised to self-quarantine by any doctor, hospital, or health agency.
- v. Any such effected persons having matters before the Court shall be permitted to participate in any proceedings by videoconference pursuant to U.S.C.R 9.2 (or the applicable rule of such other court) or by telephone.
- vi. In the event that any party, witness or attorney becomes aware that any person in attendance in court is later diagnosed with the Coronavirus (COVID-19) or advised to self-quarantine as a result of presumptive symptoms or contact with an infected individual, they shall notify the court, opposing counsel, and the office of the clerk so that notice may be provided to such other persons in attendance to the extent possible.

IT IS 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;

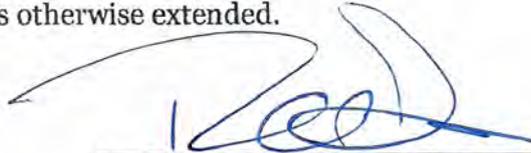
IT IS FURTHER ORDERED that the undersigned shall immediately notify and serve Chief Justice Harold D. Melton of the Supreme Court of Georgia with a copy of this Order, such service to be accomplished via email to Tee Barnes, the Clerk of the

Supreme Court of Georgia, at [barnest@gasupreme.us](mailto: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.

IT IS SO ORDERED this 24<sup>th</sup> day of March, 2020 at 4:42 p.m. in Toccoa, Stephens County, Georgia. This Judicial Emergency Order shall terminate on April 13, 2020, at 11:59 p.m., unless otherwise extended.



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



B. Chan Caudell, Judge  
Superior Courts  
Mountain Judicial Circuit

IN THE SUPERIOR COURTS  
MOUNTAIN JUDICIAL CIRCUIT  
STATE OF GEORGIA

FILED IN OFFICE  
MAR 14 2020  
*[Signature]*  
CLERK OF SUPREME  
COURT OF GEORGIA

IN RE: Declaration of \*  
Judicial Emergency \* Standing Order of the Courts  
\*  
Date: March 14, 2020 \*  
\*

**ORDER DECLARING JUDICIAL EMERGENCY**

WHEREAS, IT HAS BEEN DETERMINED that a Judicial Emergency exists in Habersham County, Rabun County, and Stephens County, Georgia affecting all courts such that there is a serious health emergency pursuant to O.C.G.A. 38-3-60(2)(D). The Governor of Georgia having on March 13, 2020 declared a Public Health State of Emergency pursuant to O.C.G.A. § 38-3-51 and the Chief Justice of the Georgia Supreme Court having on March 14, 2020 issued a Statewide Declaration of Judicial Emergency pursuant to O.C.G.A. § 38-3-60, et. seq.

WHEREAS, IT HAS BEEN DETERMINED that the Judicial Emergency substantially endangers or infringes upon the normal functioning of the judicial system as it relates to jury service, including grand jury service, and any non-essential matters, unless they can be conducted via video or teleconferencing.

Therefore, pursuant to O.C.G.A. § 38-3-61, 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 ORDER AND DECLARE the existence of a Judicial Emergency in Habersham, Rabun, and Stephens Counties. The nature of this emergency is the continued transmission of Coronavirus/COVID-19 throughout the State of Georgia and the potential infection of those who are

required to appear in our courts and interact with large groups due to jury service, including grand jury service, or other large, non-essential calendars. This order is entered following the declaration of a public health emergency by the President of the United States and the Governor of the State of Georgia, The Chief Justice of the Georgia Supreme Court and after consultation by the Chief Judge with the District Health Director.

Thus, the undersigned hereby make this declaration of a judicial emergency affecting all courts and clerk's offices in Habersham County, Rabun County, and Stephens County as it relates to jury service, including grand jury service, and any non-essential matters, unless they can be conducted via video or teleconferencing. This order is applicable to all Superior, State, Juvenile, Magistrate, Probate and Municipal Courts within the Mountain Judicial Circuit counties of Habersham, Rabun and Stephens.

Accordingly, IT IS THE ORDER of the Court that any jury trials are CONTINUED, and no jurors or grand jurors shall report, and no jury trials shall be held for a period of **thirty (30) days** from the date of the entry of this Order. Furthermore, no civil or non-essential criminal matters shall be heard by the courts during this 30-day time period, unless they can be conducted via video or teleconferencing, with the exception of cases: 1) where an immediate liberty or safety concern is present requiring the attention of the court as soon as the court is available; (2) criminal court search warrants, arrest warrants, initial appearances, and bond reviews; (3) domestic abuse temporary protective orders and restraining orders; (4) juvenile court delinquency detention hearings and emergency removal matters; and (5) mental health commitment hearings.

Parties or attorneys in any non-emergency matters should contact the chambers of the judge assigned to their case if they have any questions and/or need to ensure their compliance with this Order.

Furthermore, court-annexed proceedings such as mediation and depositions shall be rescheduled for a date occurring after the expiration of this order unless leave to continue with the proceeding is obtained from the presiding judge.

The Declaration of the Chief Justice of the Georgia Supreme Court sets forth specific periods (e.g. statutes of limitations) which are tolled, extended, and otherwise relieved for the period of the Declaration. Additionally relief, tolling or extension may be granted as to any such other legal proceedings as ordered sua sponte by the presiding judge or following motion for relief filed by a party to the proceeding.

The Clerk's offices are instructed not to accept further Rule Nisi's for court dates between the date of this order and **April 14, 2020**, without first presenting the same to the assigned judge. If a party requests that a hearing proceed that would have been cancelled by this order, the party shall contact the assigned judge, stating the reason therein.

The Judges of all courts shall supply the office of the appropriate Clerk of Court and the members of the bar with their contact information, including their email and cell-phone number (or the contact information of staff who has the ability to contact them directly) and they shall be available at all times during the pendency of this order to hear emergency matters and conference with the attorneys and parties with regard to the resolution of non-emergency disputes by conference call with counsel or email when possible and the rescheduling of matters that have been continued as a result of this order.

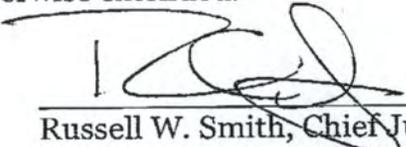
IT IS FURTHER ORDERED that the Clerks of the Courts of the Mountain Judicial Circuit shall, during the effective period of this order, accept for filing orders (for example, consent bond orders, probation waivers, and the like) which are emailed to them by the Judge or the Judge's staff, as though the document were an original.

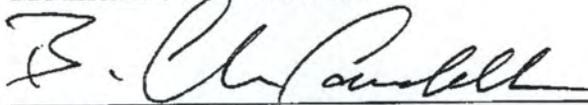
IT IS FURTHER ORDERED that the undersigned shall immediately notify and serve Chief Justice Harold D. Melton of the Supreme Court of Georgia with a copy of this Order, such service to be accomplished via email to Tee Barnes, the Clerk of the Supreme Court of Georgia, at [barnest@gasupreme.us](mailto:barnest@gasupreme.us);

IT IS FURTHER ORDERED that the undersigned shall 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.

**IT IS SO ORDERED** this 14<sup>th</sup> day of March, 2020 at 7:25 p.m. in  
Toccoa, Stephens County, Georgia. This Judicial Emergency Order shall terminate  
on April 13, 2020, at 11:59 p.m., unless otherwise extended.

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

  
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B. Chan Caudell, Judge  
Superior Courts  
Mountain Judicial Circuit