

**IN THE SUPERIOR COURT OF POLK COUNTY
STATE OF GEORGIA**

**ORDER ESTABLISHING GUIDELINES FOR IN-PERSON AND
VIDEOCONFERENCE COURT PROCEEDINGS IN THE SUPERIOR COURTS FOR
TALLAPOOSA JUDICIAL CIRCUIT**

Because Chief Justice Harold Melton has extended the current Judicial Emergency for a fourth time, now until Tuesday, August 11, 2020, at 11:59 P.M., the chief judge of the Polk County Superior Court herein sets forth the following guidelines for court proceedings scheduled after July 13, 2020.

I. DURATION OF THIS ORDER -

This order is effective upon signature and will remain in effect **until Tuesday, August 11, 2020, at 11:59 P.M.**, which is the currently set expiration for the current state of Judicial Emergency declared by Chief Justice Melton, as extended July 10, 2020.

II. SUSPENSION OF JURY TRIALS AND MOST GRAND JURY PROCEEDINGS-

The Chief Justice's Fourth Order Extending Declaration of Statewide Judicial Emergency declares that "the suspension of jury trials shall remain in effect and until further order, all courts are prohibited from summoning new trial jurors and grand jurors and from conducting criminal or civil jury trials."¹

Accordingly, no new trial jurors or grand jurors shall be summoned and no criminal or civil jury trials will be conducted in the Tallapoosa Circuit until further order of the Chief Justice.

As allowed by the Chief Justice, "Grand juries that are already impaneled or are recalled from a previous term of court may meet to attend to time-sensitive essential matters, but these grand juries shall not be assembled except when necessary and only under circumstances in which social distancing and other public health guidance can be followed. A guidance document about the continued authority of grand juries impaneled prior to the issuance of the Order is included in the Appendix to [the Chief Justice's Fourth Order Extending Declaration of Statewide Judicial Emergency]. Courts and counsel are

¹ <https://www.gasupreme.us/wp-content/uploads/2020/07/4th-SJEO-FINAL.pdf>

reminded that many criminal cases may proceed on accusation and do not require a grand jury indictment.”²

This Order incorporates herein the guidance contained in the Georgia Court Reopening Guide published by the Judicial Council Strategic Plan Standing Committee.³

III. MOTION CALENDAR: AVAILABILITY & PREPARATION —

1) Overview:

The Chief Justice has given courts discretion to conduct both *essential* and *non-essential in person* judicial proceedings, but only in compliance with public health guidance and with “the restrictions set forth in that Order [Declaring Statewide Judicial Emergency] as extended, with the following clarifications, modifications, and directions. Where this order refers to ‘public health guidance,’ courts should consider the most specific current guidance provided by the federal Centers for Disease Control and Prevention (CDC), the Georgia Department of Public Health (DPH), and their local health departments.”⁴ Moreover, “all Georgia courts must continue to conduct proceedings, remotely or in-person, in compliance with public health guidance, applicable statutes and court rules, and the requirements of the United States and Georgia Constitutions, including the public’s right of access to judicial proceedings and a criminal defendant’s rights to confrontation and an open courtroom. All courts should continue to use and increase the use of technology to conduct remote judicial proceedings as a safer alternative to in-person proceedings, unless required by law to be in person or unless it is not practicable for technical or other reasons for persons participating in the proceeding to participate remotely.”⁵

The Chief Justice’s fourth extension order “further delineates the health precautions required for all in-person judicial proceedings and specifies that courts must adopt operating guidelines consistent with the Georgia Court Reopening Guide and any more specific local public health guidance.”⁶ Accordingly, the guidelines herein set forth how in-court proceedings generally and particular types of proceedings will be conducted in the Tallapoosa Circuit to protect the health of litigants, lawyers, judges, court personnel, and the public.

² <https://www.gasupreme.us/wp-content/uploads/2020/07/4th-SJEO-FINAL.pdf>

³ https://www.gasupreme.us/wp-content/uploads/2020/06/Georgia_Court_Reopening_Guide.pdf

⁴ <https://www.gasupreme.us/wp-content/uploads/2020/07/4th-SJEO-FINAL.pdf>

⁵ <https://www.gasupreme.us/wp-content/uploads/2020/07/4th-SJEO-FINAL.pdf>

⁶ <https://www.gasupreme.us/wp-content/uploads/2020/07/4th-SJEO-FINAL.pdf>

So as to comply with the public health guidelines and requirements currently in place and as ordered by the Governor and by the Chief Justice, all parties requesting placement of a case on a court calendar that will involve *in-person* appearances of lawyers, clients, and/or witnesses shall be calendared and heard subject to compliance with the following requirements:

2) Cases that are approved for inclusion on a motions court or specially set calendar must fall under one or more of the following categories:

a. *critical and essential court services*⁷

i. *Critical court services* - Matters necessary to protect health, safety, and liberty of individuals.

1. *Critical services* include:

- a. Cases where the individual's liberty is currently restricted (i.e. currently in jail, house arrest, ankle monitor, etc.) and a hearing may result in lifting the restriction;
- b. Cases where pending charges constitute a public safety interest ensuring that those defendants who need to be under supervised release or incarceration are placed under same via plea hearings in a timely manner without delay;
- c. Cases that, if not heard, would unreasonably and unnecessarily contribute to the court's increasing backlog of cases that are not being disposed of, i.e., matters that would be otherwise in "normal" times be resolved by a plea or a dispositive pre-trial motion, so as to not delay justice for others;
- d. Cases with pending charges involves victims whose best interests require the peace of mind that arises from their cases being resolved, with justice having been done via plea hearings;
- e. Other matters that, in the discretion of the assigned judge, are considered as critical court services.

⁷ <https://www.gasupreme.us/extend-judicial-emergency/>

ii. *Essential court services* - As noted by Chief Justice Melton in his March 14, 2020, order, “*essential functions* are subject to interpretation.” (Emphasis added) He then provided a non-exclusive list of such “essential functions” that included the following that fall under superior court jurisdiction:

(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; and

(3) domestic abuse temporary protective orders and restraining orders.

iii. Cases involving *critical and/or essential court* matters will be heard either in person at the courthouse or by videoconference under guidelines set forth below.

b. *non-critical operations* – consists of all other legal matters ⁸ that can be conducted either

(1) remotely by **videoconferencing**, or

(2) **in-person** while maintaining **adherence to public health guidance**. ⁹

3) **Scheduling of cases for IN-PERSON hearings:**

a. *Staggered scheduling*- Cases will be scheduled at specific intervals throughout the day in order to avoid large group gatherings at a morning

⁸ “Recognizing the substantial backlog of pending cases, **deadlines imposed on courts shall remain suspended and tolled**. All courts should nevertheless work diligently to clear the backlog and to comply with usual deadlines and timetables to the extent safe and practicable.”

<https://www.gasupreme.us/wp-content/uploads/2020/07/4th-SJEO-FINAL.pdf> (emphasis in original).

⁹ As used herein, “public health guidance” refers to the most specific current guidance provided by the federal Centers for Disease Control and Prevention (CDC), the Georgia Department of Public Health (DPH), and the local health departments. See https://www.gasupreme.us/wp-content/uploads/2020/06/THIRD_ORDER_EXTENDING_DECLARATION_OF_STATEWIDE_JUDICIAL_EMERGENCY_AS_ISSUED.pdf

or afternoon calendar call that are contraindicated by public health guidance.

- i. Cases will be set to be heard during a specific and announced window of time, using the best estimates of the court and counsel.
- ii. If the parties don't conclude their hearing within the allotted time, the court in its discretion will either stop the proceeding and schedule it to resume at a later date and time, or proceed beyond the allotted time, depending upon the types and numbers of proceedings scheduled that same date to be heard after the unfinished hearing's pre-set time for conclusion.

4) Compelling attendance and participation for in-person and remote proceedings:

a. Authorization to compel the participation of litigants, lawyers, witnesses, and other essential personnel in remote judicial proceedings-

During the fourth extension of the judicial emergency, Chief Justice Melton has authorized courts to “compel the participation of litigants, lawyers, witnesses, and other essential personnel in remote judicial proceedings, where allowed by court rules (including emergency amendments thereto). Such proceedings, however, must be consistent with public health guidance, must not impose undue burdens on participants, and must not be prohibited by the requirements of the United States or Georgia constitutions or applicable statutes or court rules.”¹⁰

b. Procedure when serving summons or subpoena for in person appearance at a court hearing -

When a party, either *pro se* or through counsel, serves a summons or a subpoena upon another for *in person* appearance at a court hearing scheduled to take place before August 12, 2020, (i.e., during the current judicial emergency), there shall be attached to that summons or subpoena a copy of the notice attached hereto as Exhibit A, advising the recipient of the summons or subpoena of the right to object to an in-person proceeding and requesting a reasonable accommodation.

¹⁰ <https://www.gasupreme.us/wp-content/uploads/2020/07/4th-SJEO-FINAL.pdf>

In the circumstance where a person who appears for the purpose of participation in an in-person hearing was not served with a summons or subpoena to which Exhibit “A” was attached, the Court will nonetheless provide that person with an opportunity at the call of the case to object to in-person participation. This, of course, may result in the inability of the scheduled hearing to move forward as anticipated by counsel. Hence, the importance of using the notice set out in Exhibit “A”.

5) Consent by litigants to remote proceedings not otherwise authorized:

In civil and criminal proceedings, “litigants may expressly consent in the record to remote proceedings not otherwise authorized and affirmatively waive otherwise applicable legal requirements....Courts must ensure the public’s right of access to judicial proceedings and in all criminal cases, unless affirmatively waived in the record, a criminal defendant’s rights to confrontation and an open courtroom.”¹¹

IV. PROCEDURES REQUIRED FOR IN-PERSON COURT HEARINGS –

1) Scheduling:

- a. *Hearing priority*- In-person court proceedings will be scheduled in the discretion of the judge to whom the case is assigned, subject to remaining available time and resources not committed to remote judicial hearings by videoconference.
- b. *“At-risk” participants* - Any proceeding that involves an *attorney*, a *party* or an *essential witness* who falls under the CDC guideline for criteria for “higher risk of severe illness”¹² and who is **required to shelter in**

¹¹ <https://www.gasupreme.us/wp-content/uploads/2020/07/4th-SJEO-FINAL.pdf>

¹² • Those persons **age 65 or older** • **Blood disorders** (e.g., sickle cell disease or on blood thinners) • **Chronic kidney disease** as defined by your doctor. Patient has been told to avoid or reduce the dose of medications because kidney disease, or is under treatment for kidney disease, including receiving dialysis • **Chronic liver disease** as defined by your doctor. (e.g., cirrhosis, chronic hepatitis) Patient has been told to avoid or reduce the dose of medications because liver disease or is under treatment for liver disease. • **Compromised immune system** (immunosuppression) (e.g., seeing a doctor for cancer and treatment such as chemotherapy or radiation, received an organ or bone marrow transplant, taking high doses of corticosteroids or other immunosuppressant medications, HIV or AIDS) • **Current or recent pregnancy** in the last two weeks • **Endocrine disorders** (e.g., diabetes mellitus) • **Metabolic**

place pursuant to Paragraph III of Governor Kemp’s Emergency Order # 04.23.20.02,¹³ or any extensions thereof, **will not be heard in person** by the Court.

- i. Provided, however, that any such person who believes that participating in a requested in-person court hearing falls under the defined exceptions to *sheltering in place* as set forth in Paragraph III of Governor Kemp’s Emergency Order # 04.23.20.02, or any extensions thereof, shall submit an affidavit to that effect to the assigned judge prior to the court hearing the matter in-person, along with a proposed reasonable accommodation for such person’s participation. (*The affidavit must acknowledge that the affiant falls under the category of people at “higher risk,” as defined by Governor Kemp and the CDC, but in observance of HIPPA regulations, does not have to disclose the specific category, illness, or diagnosis that places such individual in the higher-risk category.*)
- c. Failure to disclose “at-risk” status- Any attorney, party, or witness who
 - i. appears in-person before this Court; and,
 - ii. falls under the CDC guideline for criteria for “higher risk of severe illness;” and,
 - iii. who is required to shelter in place pursuant to any in-force Executive Order of the governor of Georgia; and,
 - iv. who fails to make this known to the court and fails to submit the corresponding affidavit required by Paragraph “a.” above will be subject to possible legal sanction.
 - d. Objection to in-person participation- If any person has an objection to attendance or participation in an in-person court proceeding, including those who have been summoned and/or subpoenaed, then such objection

disorders (such as inherited metabolic disorders and mitochondrial disorders) • **Heart disease** (such as congenital heart disease, congestive heart failure and coronary artery disease) • **Lung disease** including asthma or chronic obstructive pulmonary disease (chronic bronchitis or emphysema) or other chronic conditions associated with impaired lung function or that require home oxygen • **Neurological and neurologic and neurodevelopment conditions** [including disorders of the brain, spinal cord, peripheral nerve, and muscle such as cerebral palsy, epilepsy (seizure disorders), stroke, intellectual disability, moderate to severe developmental delay, muscular dystrophy, or spinal cord injury] • **Class III or severe obesity.** See https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fpeople-at-higher-risk.html

¹³ As extended until 11:59 PM on July 31, 2020, by Executive Order 07.15.20.01.

shall be made known to the court at least three days prior to the scheduled proceeding, or as soon as is practicable, and shall accompany such objection with a proposed reasonable accommodation to such attendance. The court will consider the request and, in its discretion, will rule as to which accommodation, if any, is appropriate.

2) **Pre-entry screening and courtroom conduct:**

The health of each litigant, lawyer, judge, court personnel, and the public is first and foremost the responsibility of each person. The court cannot guarantee and does not guarantee that strict adherence to any public health guidance will prevent the contraction or spreading of any infectious disease, including COVID-19. If any person objects to in-person participation, please see 1)d. above.

In all circumstances, the following guidelines shall be observed for the duration of the in-person proceeding:

All participants in an in-person court hearing must submit to pre-entry screening at the courthouse entrance pursuant to the procedure authorized by separate order of this court establishing rules for courthouse access during declared judicial emergency. ¹⁴ **All participants must wear a mask or face covering when entering and while inside the court facility.**

- a. Each participant must stay at least 6 feet (about 2 arms' length) from all other people for the duration of their visit to the courthouse. This rule will apply **with no exceptions** to every proceeding, except for people who otherwise who work in the same office, or who reside in the same household. Minors who are not required to be a part of a legal proceeding should not be brought to the courthouse by a participating adult solely due to a lack of childcare.
- b. If circumstances arise wherein it is necessary for a person to sign a document or to display a document to another individual, the individuals involved are advised to manage such interactions in accordance with the latest public health guidance for social distancing from the Centers for Disease Control and the Georgia Department of Public Health.

¹⁴ https://www.gasupreme.us/wp-content/uploads/2020/06/Georgia_Court_Reopening_Guide.pdf

- c. Counsel will be required to question witnesses only from the counsel table or the lectern. An attorney or party who displays an item or document to a testifying witness must follow the latest public health guidance.
- d. The specific placement of witnesses and parties for examination in the courtroom will be determined using Public Health Guidance social distancing requirements in effect at the time of the hearing.
- e. Counsel and clients desiring to sit closer than 6 feet for private conferring, or for the duration of the hearing, will both be required to wear facial masks that comply with Public Health Guidance on the use of Personal Protective Equipment (PPE). Counsel may remove facial masks when at the lectern questioning a witness who is at least ten (10) feet or more away.
- f. Sanitization practices-
 - i. *Facility sanitization*: will be governed by policies enacted and carried out in the discretion of the county sheriff and the board of county commissioners.
 - ii. *Personal sanitization*: each participant in an in-person court hearing is expected to educate himself/herself as to the best practices for personal protection and reduction of risk to self and others. Suggested educational resources are available from the Centers for Disease Control and the Georgia Department of Public Health.

See: https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Fprevention.html

- g. Failure to abide by these guidelines during an in-person court proceeding may result in the presiding judge recessing the matter until the end of the public health and judicial emergencies or until such time as the parties are able to proceed with the matter via videoconference.

3) Alternative Dispute Resolution:

The superior courts of the Tallapoosa Judicial Circuit will not compel “in-person participation in any court-imposed alternative dispute

resolution session that is to be conducted in a manner inconsistent with applicable public health guidelines.”¹⁵

V. PROCEDURES REQUIRED FOR REMOTE HEARINGS BY VIDEOCONFERENCE-

Pursuant to the urging of the Chief Justice, the superior court of the Tallapoosa Judicial Circuit will increase the use of technology to conduct **remote judicial proceedings** where legally permitted **as a preferred alternative** to in-person proceedings.¹⁶

- 1) **Videoconference hearings** will be conducted by ZOOM or WebEx. Cases that can be heard by videoconferencing will be given priority over in-person hearings during the pendency of the Judicial Emergency.
- 2) **Witnesses, in general-** Other than as specified below, Courthouse employees and sheriff’s office employees will not be tasked with providing space and computers at the courthouse for any witnesses to use for testimony in any proceeding. However, witnesses who at the time of their testimony are incarcerated at the local jail may testify over the jail’s videoconference equipment.
 - a. **Witnesses for the state** - will testify via equipment provided by the witness or by the prosecuting attorney and pursuant to arrangements made by the office of the District Attorney.
 - b. **Witnesses for defense counsel (whether appointed or hired) in criminal proceedings** - will testify via equipment provided by the witness or by defense counsel and pursuant to arrangements made by defense counsel.
 - c. **Witnesses in civil proceedings-** will testify via equipment provided by the witness or by counsel for whom the witness has been called to testify, and pursuant to arrangements made by said counsel.

VI. PROCEDURES REQUIRED FOR BOTH REMOTE AND IN-PERSON HEARINGS –

- 1) **Open Courtrooms-** In order for the Court to balance the right to “open courtrooms” with infectious disease risk management as required by the

¹⁵ <https://www.gasupreme.us/wp-content/uploads/2020/07/4th-SJEO-FINAL.pdf>

¹⁶ <https://www.gasupreme.us/extend-judicial-emergency/>
<https://www.gasupreme.us/wp-content/uploads/2020/05/Second-Order-Extending-Declaration-of-Statewide-Judicial-Emergency-as-issued.pdf>

Judicial Emergency and Public Health State of Emergency, the following procedures apply-

Videoconference hearings:

- (i) *Criminal matters*- the Court will broadcast these hearings via publicly accessible video and audio located in the courtroom or in any other manner approved by the Chief Justice's Judicial Emergency order.
- (ii) *Civil matters*- OCGA § 9-11-40(b) provides that the "judges of any courts of record may, on reasonable notice to the parties, at any time and at chambers in any county in the circuit, hear and determine by interlocutory or final judgment any matter or issue where a jury trial is not required or has been waived..."
 1. Videoconference hearings- parties seeking resolution, by a videoconference hearing, of pre-trial motions and by final judgments in civil matters must agree to waiver of a jury trial and consent to hearing/trial in chambers. Take down of the proceedings by court reporter will be accommodated, and the cost therefore will be borne by the parties in the customary manner.

In-person courtroom hearings-

All individuals desiring to observe court in the courtroom must first submit to a pre-entry screening at the courthouse entrance pursuant to the procedure authorized by separate order of this court establishing rules for courthouse access during declared judicial emergency.¹⁷

Maximum courtroom capacity for the observing public will be determined by the presiding judge with input from the sheriff and bailiffs. The decision will be based upon how many individuals can be accommodated in the public seating area while maintaining the Public Health Guidance on social distancing of at least 6 feet of distance in a

¹⁷ https://www.gasupreme.us/wp-content/uploads/2020/06/Georgia_Court_Reopening_Guide.pdf

360-degree area between each person and all other Public Health Guidance regarding maximum crowd size.¹⁸

VII. EXITING THE COURTHOUSE

Upon conclusion of the in-person hearing, all participants who are not employees of an office located within the courthouse are required to leave the court room and courthouse immediately upon conclusion of their hearing. They will not be allowed to linger in the halls, rooms or offices. Follow-up meetings between counsel and clients and/or witnesses must be arranged to take place by phone or at counsel’s office or other location. The only exception to the requirement of prompt departure is when a participant needs to visit an office located in the courthouse for *bona fide* business purposes, whether or not related to the purpose of the judicial proceeding for which the participant appeared.

VIII. POSTING AND PUBLICATION OF THESE PROCEDURES

Pursuant to Chief Justice Melton’s order of July 10, 2020, it is ORDERED that

- 1) these operating guidelines be submitted to the Administrative Office of the Courts at:

<https://georgiacourts.gov/covid-19-court-operating-guidelines-form/>

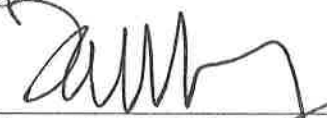
in order to be posted at:

<https://georgiacourts.gov/covid-19-court-operating-guidelines/>

as a centralized website available to litigants, lawyers, and the public; and,

- 2) the Clerk of Superior Court is authorized and directed to prominently post these guidelines at the courthouse public entrances and on the clerk’s and county government websites to provide advance notice to litigants, lawyers, and the public.

It is SO ORDERED this 21 day of July, 2020, at 2:49 o’clock A.M./(P.M), at Cedartown, Georgia.



 The Hon. Mark H. Murphy
 Chief Judge, Superior Court
 Tallapoosa Judicial Circuit

FILED & RECORDED
 CLERK SUPERIOR COURT
 POLK COUNTY, GA.
 2020 JUL 21 P 4: 15
 STACIE M. BAINES, CLERK

¹⁸ [https://www.gasupreme.us/wp-content/uploads/2020/06/Georgia Court Reopening Guide.pdf](https://www.gasupreme.us/wp-content/uploads/2020/06/Georgia_Court_Reopening_Guide.pdf)

EXHIBIT A (updated 07.13.2020)

NOTICE TO BE **ATTACHED** TO ALL SUMMONS AND TO ALL SUBPOENAS REQUIRING PERSONAL COURTHOUSE APPEARANCE BEFORE AUGUST 11, **2020**

Notice of Your Right to Object to In-person Court Appearance

You have been summoned and/or subpoenaed to appear in a matter before the Superior Court in the Tallapoosa Judicial Circuit. **The court has taken certain health and safety measures to limit the transmission of COVID-19**, as directed by the Georgia Supreme Court.

You are advised that **you have the right and the duty to object to an in-person appearance under certain circumstances**, including: (1) If you are currently infected with COVID-19 or in quarantine or isolation due to exposure to a person with COVID-19; (2) If you are a member of an immune-compromised or medically fragile population (or living in a household with someone who is immune-compromised or medically fragile); (3) If you are over age 65; (4) If you have small children but do not have child care due to COVID-19.

If you object to attendance or participation in an in-person court proceeding, then you (i) must make your objection to the court in writing; (ii) must include in your objection a reliable email and phone number at which you can be reached and a description of what you consider to be a reasonable alternative to your in-person attendance; (iii) must send your objection to the court at least three days prior to the scheduled proceeding, or as soon as is practicable, and (iii) must send your written objection to one of the following addresses:

**FOR CASE NUMBERS
ENDING WITH L, MHL, OR 99**

Hand Delivery:

Samantha Johnson
4485 Georgia Hwy 120
Buchanan, GA 30113

U.S. Mail:

Samantha Johnson
P.O. Box 155
Tallapoosa, GA 30176

Email:

sjohnson.tallapoosacircuit@gmail.com

**FOR CASE NUMBERS
ENDING WITH M OR MHM**

U.S. Mail or hand delivery:

Robin Spivey, Staff Attorney
Polk County Courthouse, Suite 105
100 Prior Street
Cedartown GA 30125

Email:

rspivey@haralsoncountyga.gov

The court will consider your request and, in its discretion, will rule as to which accommodation, if any, is appropriate.