

SUPERIOR COURTS OF GEORGIA
WAYCROSS JUDICIAL CIRCUIT

SECOND ORDER -DECLARATION OF JUDICIAL EMERGENCY

The undersigned Chief Judge of the Waycross Judicial Circuit does hereby declare the existence of a judicial emergency in this circuit, pursuant to O.C.G.A. § 38-3-60 et. seq. The nature of the emergency is due to the continuing COVID-19 pandemic. The six county circuit, along with the state and nation, is experiencing an unprecedented surge in COVID-19 cases. Moreover, the surge has been exasperated by gatherings associated with Thanksgiving, Christmas, and New Year. The undersigned Chief Judge and one other judge handle COVID related isolations, quarantines, and return to work issues within the courthouse environment daily now.

In previous Emergency Orders, the Court detailed COVID events which precipitated those orders. Since the entry of those orders, the COVID related events which the Court has dealt with are too numerous to set forth herein. Suffice it to say that many judicial system employees, as well as other courthouse employees, have contracted COVID-19, and there has been even more exposures. There has been two deaths due to COVID-19, Judge Karen Batten, Probate Judge of Brantley County and a beloved secretary in the District Attorney's office. The overwhelming majority of COVID cases and COVID exposures have arisen from spread due to non-work related activities.

On December 11, 2020 the undersigned declared the existence of a judicial emergency in the Waycross Judicial Circuit, pursuant to O.C.G.A. § 38-3-60 et. seq. The nature of the judicial emergency is due to the continuing surge of the COVID-19 pandemic. Since the entry of this

Court's December 11, 2020 order, the unprecedented surge has continued following Christmas and New Year. Area hospitals are full to over-flowing. As of this writing two lower court judges are positive for COVID-19, the staff of District Attorney's office in Waycross was exposed and is now in quarantine, with two staff testing positive. Two official court reporters are positive, one sheriff and 40% of his road deputies, and there are various other courthouse personnel symptomatic and testing and various others who are positive.

As of this writing there is no wide spread distribution of vaccines in Georgia. Wide spread vaccine distribution and substantial inoculation rates are crucial to thwarting the current surge. Without any clear guidance on these two crucial factors, it is speculative at best to look to a restart date at this time.

At present, and pursuant to Chief Justice Melton's Seventh Statewide Judicial Emergency Order dated October 10, 2020, judges in the circuit began the process of restarting jury trials. At that time the latest COVID surge had not started. After two jury trials were scheduled by one judge and jurors summons were issued, the latest surge began to materialize and carried into the Thanksgiving season. Two juries were selected the week of December 7, 2020 and one trial began. During the trial, one Assistant District Attorney tested positive for COVID-19. The District Attorney, two assistant district attorneys, the support staff of the branch office of the District Attorney's office, one attorney, and one police officer were exposed necessitating the quarantine of all. The quarantines triggered the declaration of a mis-trial in the first case and a continuance of the second jury trial. Additionally, all six counties in the Waycross Judicial Circuit are experiencing 5% or greater increases in COVID-19 cases week over week. See Department of Public Health (DPH) press releases.

In another incident involving an in-person hearing in a criminal case with another judge,

an attorney received notice that she was exposed. The notice came to her due to contact tracing. The hearing was stopped immediately in order for the attorney to begin quarantine. As of this writing, support staff in the Waycross District Attorney's office is awaiting test results and one official court reporter is awaiting test results.

The Court notes that when Governor Kemp and Chief Justice Melton declared their first emergency orders, there was one (1) COVID-19 case in the Waycross Judicial Circuit. Presently, there are thousands of COVID-19 cases. At the beginning of the pandemic, courts scaled back judicial proceedings to essential services only. Since that time we have gradually increased judicial proceedings. Prudence, caution, and wisdom dictate that we return to only conducting essential services until further notice, such an order as this is in line with Chief Justice Melton's order that Chief Judges be willing to suspend jury trials, if necessary, based on changing COVID-19 conditions. Ninth Emergency Order, p.3. The Chief Justice suspended jury trials statewide by Emergency Order on December 23, 2020.

Accordingly, all jury trials in the Waycross Judicial Circuit are hereby suspended until further order of the Court. Furthermore, all in-person court proceedings are hereby limited to essential services which protect health, safety, and liberty of individuals. Essential services shall not be given a broad interpretation and should follow the matters set forth by Chief Justice Melton in his March 14, 2020 Emergency Order. Such matters involve cases; 1) where an immediate liberty or safety concern is present requiring the attention of the Courts as soon as the court is available; 2) criminal court search warrants, arrest warrants, initial appearances, and bond reviews; 3) domestic abuse cases, temporary protective orders and restraining orders; 4) juvenile court delinquency detention hearings and emergency removal matters; and 5) mental health commitment hearings. The Court recognizes three additional matters that may be considered; 1)

domestic cases which may require immediate ex parte action to protect life, liberty, health, safety, or property of persons and in particular, the needs of children and accompanying emergency hearings; 2) dispossessory and eviction matters which involve egregious matters as determined by our magistrate judges; 3) preliminary hearings which affect liberty interest of defendants. All eight matters set forth above may be heard as needed in the discretion of the judges involved, however, all must be done in compliance with the Chief Justices' orders, CDC and DPH guidelines and all orders of this Court.

Any judge who is called upon to handle a matter(s) not noted above, but which she/he feels presents an important issue, may contact the Chief Judge for review and consideration. Many lower court judges have taken advantage of this provision of the December 11, 2020 order. Judges have been directed to provide the undersigned with a written request detailing which cases or schedules they desire to continue to handle and to detail all mitigation strategies in use in their court. Our lower court judges are to be commended for their compilation of excellent mitigation strategies, protocols and procedures. The undersigned is very familiar with the mitigation strategies, protocols and procedures used in superior court and accordingly all superior court judges are authorized to schedule cases on an "as needed" basis. All judges are reminded to prevent mass gatherings of people in their courthouse or courtroom facility and to schedule so as to preclude such gatherings.

All judges proceeding under this provision must weigh the needs of litigants, defendants, or law enforcement against the need to protect the health and safety of the public, litigants, defendants, attorneys, bailiffs and all staff. This Court places great confidence in all judges of this circuit. This confidence does not arise from pride or mere acquaintances, but is born of experience. The undersigned has witnessed first hand how the various judges have endeavored to

protect the public and staff during the pandemic.

Through the efforts of judges, sheriffs, clerks, and their staffs, I have not heard of a public to courthouse worker transmission nor a courthouse worker to public transmission. This crucial fact supports my decision to place great trust and confidence in our judges' ability to determine whether to schedule and hear appropriate cases and/or dockets which extend beyond the scope of the eight (8) aforementioned essential services.

The eight enumerated "essential services", along with discretionary additional cases, is intended to keep as many court functions and cases moving as is practical and safe. All judges must use common sense and prudence as we collectively balance the health and safety issues with the duty to maintain open court, accessibility to the courts, and essential functions. If at any time you feel that you need to continue a case(s) or to continue a docket, please feel free to do so. This is not a time for blind bravado, prudence and caution is in order as we collectively carry our circuit's lawyers, litigants, witnesses, jurors, and staffs through this pandemic.

Based on the foregoing, all jury trials, in-person calendar calls and in-person status conferences are suspended until further notice or the expiration of this order.

As of this date, the meetings of grand juries may proceed. The ability of the District Attorney and grand jury foreperson to sustain social distancing and other mitigation strategies is easier to control with the limited persons involved and limited meetings of only once per month in our circuit. This will allow this phase of criminal cases to proceed. If at any time the District Attorney feels he cannot convene a meeting safely, he may cancel that meeting and await better conditions relating to COVID-19.

Chief Justice Melton has encouraged the use of video conferencing. In Chief Justice Melton's Ninth Order Extending the Judicial Emergency dated December 9, 2020, Justice Melton

states, “All courts are again urged to utilize technology to conduct proceedings remotely to the fullest extent practicable and lawful.” Since the initial stages of the pandemic, the courts, the bar, District Attorney’s office, Public Defender’s Office, Clerks, Probation Offices, Sheriff’s Offices and others have become more familiar with video conferencing.

Paragraph III, page seven (7) of the Ninth Emergency Order states:

(A) 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.

(B) Courts should understand and utilize the authority provided and clarified by the emergency amendments made to court rules on video conferences and teleconferences.

(C) Courts may 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.

(D) In civil, criminal, juvenile, and administrative proceedings, litigants may expressly consent in the record to remote proceedings not otherwise authorized and affirmatively waive otherwise applicable legal requirements.

(E) 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.

Based upon Chief Justice Melton's orders, the experience gained by the judicial system's use of video conferencing and the needs of litigants, the Court will move to conduct cases remotely, doing so is a viable and a needed means whereby court business can still proceed and do so safely. Therefore, the bar should prepare to litigate civil matters via video conferencing.

The Court does not anticipate jury trials or in-person proceedings resuming until the surge subsides and widespread availability of vaccines have occurred. The Court will also review and consider inoculation rates when evaluating a re-opening date. Therefore, video conferencing should be embraced by all, thereby avoiding the limits to litigation that are being imposed on in-person proceedings pursuant to this order.

All judges and clerks shall prepare a written plan that allows your court and/or office to remain open for business in the event that the Court or office is closed to pedestrian traffic due to COVID-19. These plans need to be provided to me as soon as possible. Plans should provide for continuity of essential services, i.e., filing, emergencies, emergency orders, etc. The plan should address the mail, who will pick up, open, and read; drop boxes and who will check and how often; who will peruse drop off filings for emergencies, who will stamp file or note date and time of filing of documents, how drop off filings will be kept secure or monitored, etc..

Your plan needs to be printed now and ready for posting in the event of an office-wide COVID event infecting all staff or necessitating quarantine of all staff. Your plan should identify all persons who will execute your plan in the event of your absence, it should identify the person, their title or office, office number, cell number and email address. This person needs a copy of your plan and be authorized to post it if you or your staff is unable to do so.

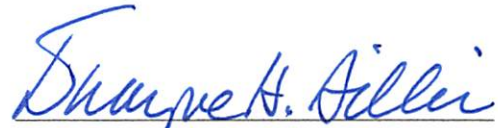
All deadlines on all courts in the Waycross Judicial Circuit are hereby suspended, tolled, or extended until further order of this Court or the Supreme Court.

This provision does not toll, suspend, or extend any deadline on any court where the parties present a consent judgment on any matter, particularly domestic cases and divorces.

This order does not suspend, toll or extend any deadline on any litigant or lawyer.

IT IS FURTHER ORDERED, pursuant to O.C.G.A. § 38-3-63, that notice and service of a copy of this Order shall immediately be served upon the Chief Justice of the Georgia Supreme Court, Chief Judge of the Georgia Court of Appeals and the respective clerks thereof; all clerks and judges of all courts in the Waycross Judicial Circuit; and all pertinent newspapers in the circuit. All clerks are ordered to post this order conspicuously in their respective courthouses. Such service to be accomplished through means to assure expeditious receipt, which include electronic means and shall constitute sufficient notice of the issuance of this Order to the affected parties, counsel for the affected parties, and the public.

SO ORDERED this 8th day of January, 2021.


Dwayne H. Gillis, Chief Judge
Superior Court of Ware County