

FILED IN OFFICE

October 4, 2021



SUPREME COURT OF GEORGIA

IN THE SUPERIOR COURT OF CHEROKEE COUNTY
BLUE RIDGE JUDICIAL CIRCUIT
STATE OF GEORGIA

ORDER GRANTING RELIEF FROM STATUTORY SPEEDY TRIAL REQUIREMENTS
PURSUANT TO O.C.G.A. § 38-3-62(b)

The time requirements for the filing of a statutory speedy trial demand imposed by O.C.G.A. §§ 17-7-170 and 17-7-171 were reinstated in the Superior Court of Cherokee County of the Blue Ridge Judicial Circuit on July 1, 2021. The time constraints for bringing a case to trial under said statutes remained tolled from July 1, 2021 under a series of local judicial emergency orders entered pursuant to O.C.G.A. § 38-3-60 et.seq. No local judicial emergency order may be extended at this time, and the Court's current local judicial emergency order terminates on September 30, 2021.¹

Pursuant to O.C.G.A § 38-3-62(b), and based upon the certification attached hereto as "Exhibit A – Certification", the time constraints to bring cases to trial imposed by O.C.G.A §§ 17-7-170 and 17-7-171 will remain tolled in the Superior Court of Cherokee County effective January 3, 2022, for the duration of this Order.

According to the Supreme Court's *Guidance on the Extension of Deadlines and Time Limits Defined by Reference to Terms of Court Under the Chief Justice's Order Declaring Statewide Emergency*, interrupted terms of court do not count in the calculation of deadlines and time limits for statutory speedy trial demand purposes. Accordingly, the May 2021 term of the court was interrupted by the statewide judicial emergency², and the September 2021 term was interrupted by the Court's local order.

Therefore, this Order shall become effective at the beginning of the next term of court, which begins January 3, 2022. It shall terminate on September 3, 2022, a date that is not more than eight months from its effective date, and the last day of a term of the Superior Court of Cherokee County of the Blue Ridge Judicial Circuit, unless statutory speedy trial requirements

¹ Order Declaring Local Judicial Emergency, filed July 1, 2021, at Superior Court Minute Book 201, Page 2757; Order Extending Local Judicial Emergency, filed July 30, 2021, at Superior Court Minute Book 201, Page 2788; Order Amending Order Extending Local Judicial Emergency, filed August 5, 2021, at Superior Court Minute Book 201, Page 2797; and Order Extending Local Judicial Emergency, filed August 16, 2021, at Superior Court Minute Book 201, Page 2820.

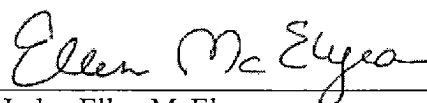
² Fifteenth Order Extending Declaration of Statewide Judicial Emergency, filed in the Supreme Court of Georgia, June 7, 2021.

are reinstated by the Chief Justice of the Georgia Supreme Court pursuant to O.C.G.A. §38-3-62(b) (11). The Court is aware that the time from the entry of this Order to its effective date is approximately three (3) months. The Court will review all requirements of certification set forth by statute in December, 2021, to consider whether this Order should be modified or suspended.

Nothing herein shall relieve the State of its constitutional obligation to provide a for a speedy and public criminal trial.

This Order shall be filed with the Clerk of Superior Court of Cherokee County in the Superior Court Minute Book. Pursuant to O.C.G.A. § 38-3-63, said Order shall be posted at all entryways to the Frank C. Mills, III, Justice Center, on the website of the Clerk of Court and the Court Administrator, and at the elevator entrances on all floors of the Justice Center. This Order shall immediately be served upon Chief Justice David E. Nahmias of the Supreme Court of Georgia, such service to be accomplished via email to Tee Barnes, the Clerk of the Supreme Court of Georgia, at barnest@gasupreme.us. This Order shall immediately be served upon the individuals and offices below by email, such service to be accomplished to assure expeditious receipt. this Order shall be distributed by email to the Cherokee Bar Association and the Indigent Defense Office.

SO ORDERED, this 1st day of October, 2021.



Chief Judge Ellen McElyea
Superior Court of Cherokee County
Blue Ridge Judicial Circuit

Copies to;
Chief Justice David E. Nahmias, Supreme Court of Georgia
Tee Barnes, Clerk of the Supreme Court of Georgia
Clerk, Georgia Court of Appeals
Sheriff Frank Reynolds
Judges of Cherokee Superior Court
Judges of Cherokee State Court
Judges of Cherokee Juvenile Court
Judge James Drane, Magistrate
Judge Keith Wood, Probate Court
Patty Baker, Clerk of Courts
Shannon Wallace, District Attorney
Todd Hayes, Solicitor-General

Lynn Epps, Court Administrator
Cherokee County Bar Association
Louis Turchiarelli, Indigent Defense Director
Cherokee County Board of Commissioners

Exhibit A – Certification

Pursuant to O.C.G.A. § 38-3-62(b)(3), the Chief Judge and the two other active judges of the Superior Court of Cherokee County certify as follows:

1. Under the totality of the circumstances arising from and following the statewide judicial emergency declared on March 13, 2020 and ending on June 30, 2021, and the local judicial emergency declared July 1, 2021, and extended by Orders dated August 1, 2021, and September 1, 2021, terminating on September 30, 2021, compliance with the statutory speedy trial requirements established in OCGA §§ 17-7-170 and 17-7-171 is impracticable in the Superior Court of Cherokee County of the Blue Ridge Judicial Circuit.

2. The current pending criminal case volume in the Superior Court of Cherokee County is significantly higher than in calendar years prior to the statewide judicial emergency. As of September 29, 2021, the pending criminal case volume is 1700; as of December 31, 2020, it was 1315; as of December 31, 2019, it was 776; and as of December 31, 2018, it was 931.

3. The annualized criminal case clearance rate in the current calendar year is lower than the average criminal case clearance rate for the calendar years prior to the statewide judicial emergency. As of September 29, 2021, the annualized criminal clearance rate is 70%; as of December 31, 2020, it was 58%; as of December 31, 2019, it was 110%; and as of December 31, 2018, it was 89%.

4. The number of speedy trial demands pending within one month of the date of this certification totals zero.

5. The number of jury trials held during the last full term of court (May term) was 4. No trials have been held in the current term of court (September term) due to suspension of jury trials based on a local judicial emergency order arising from a spike of COVID cases in the community.

6. The following ongoing space limitations or other health or safety concerns exist preventing the use of facilities available to conduct criminal trials.

a) There are three (3) active Superior Court judges and four (4) Superior Court courtrooms in the Justice Center. There are three (3) active State Court judges. The fourth Superior Court courtroom is shared with the State Court for jury trials, as one of the State Court courtrooms does not have a jury box. There is one jury assembly room in the Justice Center, used by both Superior and State Court.

b) A State Court courtroom was specially reconfigured to allow adequate spacing for all participants, as set forth in CDC guidelines for social distancing. This was the only courtroom used for both Superior and State Court trials when the statewide judicial emergency order was modified to allow jury trials in March, 2021. Only one trial could take place at a given time, due to limited space in the jury assembly room, and because additional courtrooms were used for jury deliberations and public access to view the trial via livestream.

c) In August, 2021, Superior Court trials took place in Superior Court courtrooms with jurors socially distanced in the audience seating area of the courtrooms. Only two trials could be held simultaneously, due to limited space in the jury assembly room, the use of the other two Superior Court courtrooms as jury deliberation rooms, and the use of other courtrooms for public viewing on livestream.

d) None of the courtrooms in the Justice Center are large enough to accommodate multiple co-defendant trials with adequate social distancing.

7. The District Attorney's Office and the Indigent Defense office have limited resources to provide attorneys for multiple back-to-back cases. Jurors must pass through public areas of the building as they move between the trial courtroom and the deliberation courtroom, requiring additional bailiffs and sheriff's personnel.

8. There has been a plan in place to reduce the number of criminal defendants held in custody awaiting trial; jury trials resumed in March, 2021, subject to the restrictions referenced elsewhere in this certification. Six weeks of jury trials have been held since then, and 6 trials have taken place. A trial week in August was suspended due to the Delta variant spike in cases, and no trials took place in September for the same reason. A jury trial week for one judge is scheduled to begin October 4, 2021, and a jury trial week is set for December 6, 2021. Additionally, see Paragraph 9(b).

9. Other relevant facts that justify ongoing relief from statutory speedy trial requirements as follows.

a) In August, 2020, the Judicial Council of Georgia recommended the creation of a fourth judgeship for the Blue Ridge Judicial Circuit, based on the court's caseload from 2017-2019, and the population growth in the circuit since the creation of the last new judgeship in 2007. The Judicial Council ranked the Blue Ridge Judicial Circuit second in priority for new judgeships. The Georgia General Assembly did not fund the position during the 2021 legislative session. By letter dated September 21, 2021, Chief Justice Nahmias advised the circuit that the Judicial Council's recommendation is unchanged for 2021. The Judicial Council's caseload statistics indicate that each Superior Court judge of the Blue Ridge Circuit is doing the work of 1.5 judges.

b) On October 11, 2021, jury selection will begin in the case of State vs. Elrod, Samples and Zellous. The defendants are charged with multiple counts, including violation of the Georgia Street Gang and Terrorism Act and felony murder. They have been in the custody of the Cherokee County Adult Detention Center since July 12, 2017, July 14, 2017, and June 29, 2017, respectively. Due to the need for social distancing, the trial will take place in the jury assembly room, and is expected to last at least six (6) weeks. Witnesses expected to testify include six other current inmates at the CCADC, as well as six individuals currently in the custody of the Department of Corrections. The space needs, heightened security requirements, and personnel needs for this case mean that no other jury trial can take place during its pendency.

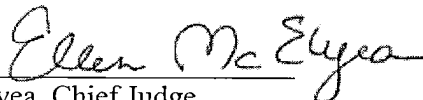
10. A plan to resolve cases in which a statutory speedy trial demand has been filed as expeditiously as possible is hereby established. It is hereby ordered that any case in which a valid statutory speed trial demand has been filed shall be prioritized for trial. The highest priority shall be given to any such case in which 1) the defendant has been held in custody while awaiting trial; 2) the defendant is in custody as a result of the charges in the case in which the statutory speedy trial demand has been filed; and 3) the most serious crime with which the defendant is charged. Such cases shall further be prioritized for trial based upon length of time the defendant has remained in custody prior to trial.

11. Number of trial weeks scheduled during the pendency of this Order:

- a) Judge McElyea, 9;
- b) Judge Cannon, 9; and
- c) Judge Baker, 8.

The above schedule is based on only two Superior Court trials taking place simultaneously. Should CDC guidance regarding social distancing allow for use of regular jury deliberation rooms and use of jury assembly room to capacity, additional trials will be scheduled by each judge, and the assistance of senior judges will be requested.

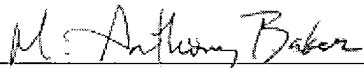
SO CERTIFIED this 1st day of October, 2021, by the Judges of the Superior Court of Cherokee County, Blue Ridge Judicial Circuit.



Ellen McElyea, Chief Judge
Superior Court of Cherokee County
Blue Ridge Judicial Circuit



David L. Cannon, Jr., Judge
Superior Court of Cherokee County
Blue Ridge Judicial Circuit



M. Anthony Baker, Judge
Superior Court of Cherokee County
Blue Ridge Judicial Circuit