

IN THE SUPERIOR COURT OF DEKALB COUNTY
STONE MOUNTAIN JUDICIAL CIRCUIT
STATE OF GEORGIA

RE: Declaration of Judicial Emergency IN * 21AP1025
Date: January 8, 2021 * *
* * *

ORDER DECLARING JUDICIAL EMERGENCY (TENTH)

(Extended through February 7, 2021 at 11:59 p.m.)

On March 14, 2020, in response to the COVID-19 pandemic, the Honorable Harold D. Melton, as the Chief Justice of the Supreme Court of Georgia, issued an Order Declaring Statewide Judicial Emergency pursuant to OCGA § 38-3-61. That Order has been extended several times, with modifications, by orders issued on April 6, May 11, June 12, July 10, August 11, September 10, October 10, November 9, December 9, 2020 and December 23, 2020. After consulting with the Judicial Council of Georgia and other judicial partners, recognizing again that most in-court proceedings compel the attendance of various individuals rather than allowing them to decide how best to protect their own health and that jury trials require the participation of the most individuals, and further recognizing that the novel coronavirus continues to spread dangerously in Georgia, it is determined that the Orders should be extended again.

Courts in Georgia have continued to perform essential functions despite the pandemic. Courts have also greatly expanded the use of remote proceedings and have resumed limited in-person proceedings that can be conducted safely. In an effort to return to more robust court operations, many of the deadlines imposed by law on

litigants in civil and criminal cases that had been suspended, tolled, or extended since the initial March 14 Order were reimposed as of July 14, allowing more pending and newly filed cases to move forward in the judicial process. The September 10 order authorized the Chief Judge of each superior court, in his or her discretion after consultation with the District Attorney, to resume grand jury proceedings if doing so can be done safely and in compliance with public health guidance based on local conditions. A number of courts have utilized this authority, and many more are expected to do so going forward.

The October 10 extension order recognized that the blanket prohibition of jury trials, which require the assembly of larger numbers of people, could not continue, even though the pandemic continues, because our judicial system, and the criminal justice system in particular, must have some capacity to resolve cases by trial, and our trial courts have accumulated many cases that are awaiting trial. The September 10 order directed the Chief Judge of each superior court to convene for each county in his or her circuit a local committee of judicial system participants to develop detailed guidelines for the safe resumption of jury trials in the county, utilizing the “Guidance for Resuming Jury Trials” included in the Appendix to this order. The October 10 order authorized the Chief Judge of each trial court, in his or her discretion, to resume the jury trial process if local conditions allow and the Chief Judge, in collaboration with the local committee, has developed and issued a final jury trial plan. A number of courts have already issued their plans to safely resume jury trials, and many more are in the process

of developing those plans with their local committees.

Because of the escalating danger presented by the significant increase in COVID- 19 cases late in 2020, however, the December 9 order was modified on December 23 to prohibit jury trials not already in progress. That prohibition is continued in this order, as specified in Section I (B) below. As stated in the modified order, **all courts are again urged to use technology, when practicable and lawful, to conduct remote judicial proceedings as a safer alternative to in-person proceedings. Where remote proceedings are not practicable or lawful, courts are reminded that in-person proceedings must be conducted in full compliance with public health guidance and the other requirements set forth in this order and in light of local conditions. In particular, courts should manage case calendars to minimize the number of participants gathering both in the courtroom and in common areas outside of courtrooms.**

Further, grand jury proceedings in DeKalb County are hereby tolled during the term of this Order.

It should be recognized that grand jury hearings and jury trials will not actually start until a month or longer after the process for resuming them begins in a particular county or court, due to the time required to summon potential jurors for service. It also should be recognized that there are substantial backlogs of unindicted and untried cases, and due to ongoing public health precautions, these proceedings will not occur at the scale or with the speed they occurred before the pandemic. Thus,

while our justice system must resume moving cases to indictment and trial as rapidly as can be done safely, **statutory deadlines based on indictments and jury trials will remain suspended and tolled.** As grand jury proceedings resume, however, the deadlines in OCGA §§ 17- 7-50 and 17- 7-50.1 for presenting cases involving detained defendants to a grand jury may be reimposed. This will be done with at least 30 days prior notice, but where grand jury proceedings are occurring, district attorneys should already be prioritizing these cases to reduce backlogs.

As has been the direction since the original Order, 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. This order again delineates the health precautions required for all in-person judicial proceedings and requires courts to adopt and maintain operating guidelines consistent with the Georgia Court Reopening Guide and any more specific local public health guidance.

Accordingly, the Order Declaring Statewide Judicial Emergency, which would have expired on Friday, January 8, 2021, at 11:59 p.m., is further **extended until**

Sunday, February 7, 2021, at 11:59 p.m. All Georgia courts shall continue to operate

under the restrictions set forth in that Order as extended; **the provisions of this order below are identical to the December 9 extension order except Section I (B) relating to jury trials.** 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.

I. Grand Jury Proceedings and Jury Trials

(A) Grand Jury Proceedings Authorized

(1) The Chief Judge of each superior court, in his or her discretion after consulting with the District Attorney, may resume grand jury proceedings in person or remotely (where consistent with law), if doing so can be done safely and in compliance with public health guidance based on local conditions. When a Chief Judge exercises this authority, he or she must provide sufficient notice to the appropriate clerk of court or court administrator to allow the process of summoning potential jurors, and potential jurors should be informed in advance about the practices that the court will use to ensure their safety. Guidance for safely conducting in-person grand jury proceedings, based on recommendations from the Judicial COVID-19 Task Force, and guidance on conducting remote grand jury proceedings are included in the Appendix to this order.

(2) Courts and counsel are reminded that many criminal cases may proceed on accusation and do not require a grand jury indictment.

(B) Jury Trials Prohibited: Local Committees to Develop County Jury Trial Guidelines

(1) In response to the recent rapid escalation of COVID-19 cases, and to protect the health and safety of the public and court personnel while continuing to allow access to essential judicial functions, all jury trials not already in progress, including in-person proceedings to select jurors, are prohibited. This order does not preclude the issuance of juror summonses.

(2) As directed in the September 10 extension order, before jury trials resume, every county should have in place a local committee of judicial system participants, convened by the Chief Judge of the county's superior court, which is charged with developing a plan for safely resuming jury trials in the county as further described in the "Guidance for Local Committees on Resuming Jury Trials" included in the Appendix to this order. The local committees should utilize the "Guidance for Resuming Jury Trials" also included in the Appendix in developing their plans, which must be submitted to the Administrative Office of the Courts (AOC) as soon as possible and before the jury trial process begins.

(C) Because there are substantial backlogs of unindicted and untried cases and because grand jury proceedings and jury trials even when resumed will not occur at the scale or with the speed as before the pandemic, deadlines calculated by reference to the date of grand jury proceedings or jury trials, including but not limited to the speedy trial deadlines in OCGA §§ 17-7-170 and 17-7-171 and the deadlines for indicting detained individuals in OCGA §§ 17-7-50 and 17-7-50.1, will remain suspended and tolled as discussed in Section II (A)(1) below.

II. Reimposition of Deadlines on Litigants

(A) The July 10 extension order reimposed all deadlines and other time schedules and filing requirements (referred to collectively herein as "deadlines") that are imposed on **litigants** by statutes, rules, regulations, or court orders in civil and criminal cases and administrative actions and that had been suspended, tolled, extended, or otherwise relieved by the March 14, 2020 Order Declaring Statewide Judicial Emergency, as extended, on the following schedule and with the following exceptions and conditions:

(1) Consistent with Section I above, **deadlines for jury trial proceedings (including statutory speedy trial demands), deadlines for grand jury proceedings, and deadlines calculated by reference to the date of a civil or criminal jury trial or grand jury proceeding shall remain suspended and tolled.** This provision does not apply to deadlines calculated by reference to the date of non-jury (bench) trials. Statutes of limitation in criminal cases shall also remain tolled until further order.

(2) **All other deadlines imposed on litigants were reimposed effective July 14, 2020,** as further explained below.

(3) In cases that were pending before the March 14 Order, litigants

were provided the same amount of time to file or act after July 14 that they had as of March 14.

(4) In cases filed between March 14 and July 13, 2020, the time for deadlines began to run on July 14.

(5) In cases filed on or after July 14, 2020, litigants must comply with the normal deadlines applicable to the case.

(6) If the reimposed deadline falls on a weekend or legal holiday, the deadline will as normal be the next business day. See OCGA § 1-3-1 (d) (3).

(7) Any extension of time for a litigant's filing or action that was granted by a court, or was agreed or consented to by the litigants as authorized by law, before July 14, 2020, also extended the time for that filing or action after July 14.

(8) Litigants may be entitled to additional time based on the provisions of a local judicial emergency order applicable to their case if such an order tolled applicable deadlines before the March 14, 2020 Order Declaring Statewide Judicial Emergency or tolls applicable deadlines after July 14, 2020.

(9) The tolling and suspension of deadlines imposed on litigants in civil and criminal cases that are calculated by reference to terms of court were lifted as of July 14, 2020, and any regular term of court beginning on or after July 14 counts toward such deadlines. See also the May 4, 2020 "Guidance on Deadlines and Time Limits Defined by Reference to Terms of Court" included in the Appendix.

(10) The 122 days between March 14 and July 14, 2020, or any portion of that period in which a statute of limitation would have run, shall be excluded from the calculation of that statute of limitation.

(11) Litigants may apply in the normal way for extensions of reimposed deadlines for good cause shown, and courts should be generous in granting extensions particularly when based upon health concerns, economic hardship, or lack of childcare.

(B) 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.

(C) If before July 14 a court reimposed deadlines by order in a specific case

based on the authority to do so granted by prior extension orders, the case-specific order reimposing deadlines shall control over the deadlines for the same filings or actions reimposed by this statewide order.

(D) If in a divorce or adoption case a time period required by law actually passed or passes before the court entered or enters a consent order, consent judgment, or consent decree regarding the divorce or adoption, such order, judgment, or decree shall not be invalid based on any suspension or tolling of the applicable period by the March 14 Order as extended.

III. Proceedings Conducted Remotely Using Technology

(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.

IV. In-Person Proceedings Under Guidelines for Safe Operations

(A) **Courts have discretion to conduct in-person judicial proceedings, but**

only in compliance with public health guidance and with the requirements of the United States and Georgia Constitutions and applicable statutes and court rules, including the public's right of access to judicial proceedings and a criminal defendant's rights to confrontation and an open courtroom.

(B) **No court may compel the attendance of any person for a court proceeding if the court proceeding or the court facility in which it is to be held is not in compliance with this order, including in particular large calendar calls. Courts are also prohibited from compelling 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.**

(C) **Each court shall develop and implement operating guidelines** as to how in-court proceedings generally and particular types of proceedings, including grand jury proceedings and jury trials, will be conducted to protect the health of litigants, lawyers, jurors, judges, court personnel, and the public.

(1) The Judicial Council Strategic Planning Committee and the Judicial COVID-19 Task Force have issued a bench card entitled "Georgia Court Reopening Guide," which is included in the Appendix and should be used as the template for such operating guidelines, which at a minimum should include all subject matters contained therein. Courts should also consider guidance from local health departments and guidance provided by CDC and DPH; if local public health guidance is more restrictive than the bench card, the local public health guidance should be followed instead.

(2) With regard to everyone who works in a court facility, the operating guidelines shall require **isolation** of any person with known or suspected COVID-19 and **quarantine** of any person with COVID-19 exposure likely to result in infection, in accordance with the DPH Tenth Amended Administrative Order for Public Health Control Measures, a link to which may be found in the Appendix, or any subsequent version thereof.

(3) When there is reason to believe that anyone who works at or has visited a court facility has been exposed to COVID-19, DPH or the local health department shall be notified, and **notification** of persons who may have been exposed shall occur as directed by DPH or the local health department.

(D) Courts of different classes that share courthouse facilities or operate in the same county should coordinate their operating guidelines, and should seek to coordinate operating guidelines with non-judicial

entities sharing courthouse facilities.

(E) Each court must submit its operating guidelines to the AOC at <https://georgiacourts.gov/covid-19-court-operating-guidelines-form> to be posted at <https://georgiacourts.gov/covid-19-court-operating-guidelines/> as a centralized website available to litigants, lawyers, and the public. Operating guidelines also should be prominently posted at courthouse entrances and on court and local government websites to provide advance notice to litigants, lawyers, and the public.

(F) Operating guidelines shall be modified as public health guidance is modified, and shall remain in effect until public health guidance indicates that they are no longer required.

V. Discretion of Chief Judges to Declare More Restrictive Local Judicial Emergencies

(A) Nothing in the Order Declaring Statewide Judicial Emergency as extended and modified limits the authority of the Chief Judge of a superior court judicial circuit under OCGA §§ 38-3-61 and 38-3-62 to add to the restrictions imposed by the statewide judicial emergency, if such additional restrictions are constitutional, necessitated by local conditions, and to the extent possible ensure that courthouses or properly designated alternative facilities remain accessible to carry out essential judicial functions. A Chief Judge may impose such additional restrictions only by a properly entered order.

(B) No court may disregard the restrictions imposed by the Order as extended and modified.

VI. Guidance on Application of the Order

Included in the Appendix are several guidance documents that clarify the application of the order in particular contexts. Additional guidance documents may be posted on the AOC's website at <https://georgiacourts.gov/judicial-council/aoc/>. Guidance related to the tolling of deadlines should be read in light of the reimposition of deadlines by this order and by orders in specific cases.

VII. Professionalism

With regard to all matters in this challenging time, all lawyers are reminded of their

obligations of professionalism, including the obligation to engage in discovery in good faith and in a safe manner. Judges are also reminded of their obligation to dispose of all judicial matters promptly and efficiently, including by insisting that court officials, litigants, and their lawyers cooperate with the court to achieve that end, although this obligation must not take precedence over the obligation to dispose of matters fairly and with patience, which requires sensitivity to health and other concerns raised by court officials, litigants and their lawyers, witnesses, and others.

VIII. Notice Provisions

(A) Notice will be provided as to the expected termination of the Order as extended and modified at least one week in advance to allow courts to plan for the transition to fuller operations.

(B) The clerks and court administrators of trial courts that conduct jury trials and convene grand juries will be provided sufficient notice of the resumption of jury proceedings to allow the complicated process of summoning potential jurors to be completed.

(C) The impact of COVID-19 varies across the state, and the level of response and adjustment will likewise vary among courts. Courts should make available to the public the steps they are taking to safely increase operations while responding to the COVID-19 pandemic. Recognizing that not all courts have a social media presence or website, the AOC will continue to post court-specific information as it becomes available on the AOC website at <https://georgiacourts.gov/covid-19-preparedness>.

(D) Pursuant to OCGA § 38-3-63, notice and service of a copy of this order shall immediately be sent to the judges and clerks of all courts in this State and to the clerk of the Court of Appeals of Georgia, such service to be accomplished through means to assure expeditious receipt, which include electronic means. Notice shall also be sent to the media, the State Bar of Georgia, and the officials and entities listed below and shall constitute sufficient notice of the issuance of this order to the affected litigants, counsel for the affected litigants, and the public.

IT IS SO ORDERED:

ALL PERSONS SEEKING ENTRY TO THE COURTHOUSE **SHALL WEAR A**
FACE MASK OR FACE COVERING.

WHILE INSIDE THE COURTHOUSE, IF POSSIBLE, PERSONS ARE ASKED TO **MAINTAIN SIX (6) FEET OF DISTANCE** BETWEEN THEMSELVES AND THE PUBLIC AND/OR COURT EMPLOYEES.

ADDITIONALLY, CHILDREN UNDER THE AGE OF EIGHTEEN (18), UNLESS THEY ARE PARTIES TO OR ARE NECESSARY FOR A CASE, ARE EXPRESSLY PROHIBITED FROM ENTERING THE COURTHOUSE.

THIS ORDER DOES NOT PRECLUDE THE IN-PERSON OPENING AND OPERATIONS OF MUNICIPAL COURTS IN DEKALB COUNTY AS LONG AS INDIVIDUALS IN THOSE COURTS PRACTICE SOCIAL DISTANCING, ADHERE TO CDC AND HEALTH DEPARTMENT SAFETY RECOMMENDATIONS AND MANDATES AS WELL AS CAPACITY RECOMMENDATIONS LIMITING THE NUMBER OF INDIVIDUALS IN A SPACE GATHERING INCLUDING COURTROOMS, AND FOR THE HEALTH, SAFETY AND WELFARE OF OTHERS, REQUIRING A FACE MASK OR OTHER FACE COVERING FOR ANYONE ENTERING THE COURTHOUSE.

Licensure Applications: It is further ordered that ALL licensure applicants are by appointment only and persons may obtain an appointment by first contacting that specific licensure office.

Probate Court Services: ALL persons who wish to review and/or research Probate Court records or obtain copies of Probate Court records shall do so **by appointment only**.

Persons shall first contact the Probate Court to make an appointment to do so.

Clerk of Court Services: ALL applications or services related to Trade-names, Notary Commissions, Notary Renewals, Emergency Passports, Title Examiners, etc. shall be by **appointment only**. Persons shall contact the Clerk's Office to make an appointment.

This Court hereby adopts and incorporates the *Tenth Order Extending Declaration of Statewide Judicial Emergency* entered by Chief Justice Harold D. Melton of the Supreme Court of Georgia on January 8, 2021 into this Order as if fully written herein. Pursuant to O.C.G.A. § 38-3-63:

IT IS ORDERED that the Sheriff of DeKalb County shall post this Order on her public notification site and in the courthouses;

IT IS FURTHER ORDERED that the undersigned shall immediately notify and serve Chief Justice Harold D. Melton of the Supreme Court with a copy of this Order, such service to be accomplished through reasonable means to assure expeditious receipt;

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 8th day of January, 2021.

Asha Jackson (Jan 5, 2021 08:30 EST)

The Honorable Asha F. Jackson
Chief and Administrative Judge
DeKalb County Superior Court
Stone Mountain Judicial Circuit