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## STATEWIDE JUDICIAL EMERGENCY: Judicial Order by the Supreme Court of Georgia Declaring a Statewide Judicial Emergency

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## STATEWIDE JUDICIAL EMERGENCY

### *Judicial Order by the Supreme Court of Georgia Declaring a Statewide Judicial Emergency*

CODE SECTIONS: O.C.G.A. §§ 38-3-60, -61, -62, -63, -64  
JUDICIAL ORDERS: Order Declaring Statewide Judicial  
Emergency; Order Extending  
Declaration of Statewide Judicial  
Emergency; Second Order Extending  
Declaration of Statewide Judicial  
Emergency; Third Order Extending  
Declaration of Statewide Judicial  
Emergency; Fourth Order Extending  
Declaration of Statewide Judicial  
Emergency

EFFECTIVE DATES: March 14, 2020; April 6, 2020; May  
11, 2020; June 12, 2020; July 10, 2020

SUMMARY: The Supreme Court of Georgia issued  
an Order declaring a Statewide Judicial  
Emergency to reduce the transmission  
of COVID-19 throughout the State of  
Georgia. The courts remained open to  
address essential functions, as defined  
within the Order. Additionally, all  
deadlines and other filing requirements  
were extended or tolled. Throughout  
the counties in Georgia, different courts  
released Orders outlining how they  
would follow the Judicial Emergency  
Order from the Supreme Court of  
Georgia. The Judicial Emergency  
Order had been extended four times as  
of August 1, 2020.

*Introduction*

In March of 2020, many entities called for states to declare a state of emergency to fight the COVID-19 pandemic. First, the World Health Organization declared COVID-19 a pandemic on March 11, 2020.<sup>1</sup> Following that, and due to increasing cases, the United States declared a state of emergency on March 13, and Georgia declared a Public Health State of Emergency on March 14.<sup>2</sup> Governor Brian Kemp (R) stated that the “public health emergency is unprecedented for the State of Georgia, and that [he does] not take this action lightly. It is a more specialized form of a state of emergency and allows for a more robust response to the crisis specifically in the healthcare sector.”<sup>3</sup>

Following Governor Kemp’s declaration, the Supreme Court of Georgia declared a Statewide Judicial Emergency on March 14, 2020.<sup>4</sup> Before the Governor declared the Public Health State of Emergency, the Governor and the judiciary’s approach focused on local hotspots.<sup>5</sup> After hearing the concerns from judges across the state regarding the spread of the virus, however, the Judicial Council conducted an emergency hearing to examine the issue.<sup>6</sup> Following this hearing, Chief Justice Melton of the Supreme Court of Georgia declared a Statewide Judicial Emergency on March 14, 2020.<sup>7</sup>

The Statewide Judicial Emergency Order focused on the mission of the judicial system: the “safeguard[ing] of basic human rights.”<sup>8</sup> As such, the Supreme Court of Georgia drafted the Order to balance

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1. *New ICD-10-CM Code for the 2019 Novel Coronavirus (COVID-19)*, CTRS. FOR DISEASE CONTROL & PREVENTION (Apr. 1, 2020) [hereinafter ICD-10-CM], <https://www.cdc.gov/nchs/data/icd/Announcement-New-ICD-code-for-coronavirus-3-18-2020.pdf> [<https://perma.cc/B7WE-LTMV>].

2. *Id.*; Press Release, Brian P. Kemp, Gov. of Georgia, Kemp Declares Public Health State of Emergency (Mar. 16, 2020) [hereinafter Emergency Press Release], <https://gov.georgia.gov/press-releases/2020-03-16/kemp-declares-public-health-state-emergency> [<https://perma.cc/JWX6-HFXY>].

3. Emergency Press Release, *supra* note 2.

4. Order Declaring Statewide Jud. Emergency (Ga. Mar. 14, 2020) (on file with the Georgia State University Law Review) [hereinafter Judicial Emergency Order].

5. Video Interview with C.J. Melton, Sup. Ct. of Ga. (June 4, 2020) (on file with the Georgia State University Law Review) [hereinafter C.J. Melton Interview].

6. *Id.*

7. Judicial Emergency Order, *supra* note 4.

8. C.J. Melton Interview, *supra* note 5.

the protection of court staff with the need to keep Georgia’s courts running.<sup>9</sup> When crafting the Order, the court adhered to the guidelines in the Georgia Code, which allow an authorized judicial official to declare emergencies.<sup>10</sup>

Code sections 38-3-60 through 38-3-64 allow the authorized judicial official to declare a judicial emergency.<sup>11</sup> Specifically, Code section 38-3-61 states that a judicial emergency:

[S]hall be limited to an initial duration of not more than 30 days; provided, however, that the [O]rder may be modified or extended for no more than two periods not exceeding 30 days each unless a public health emergency exists as set forth in Code Section 38-3-51, in which case the Chief Justice of the Supreme Court of Georgia may extend the [E]mergency [O]rder for so long as such emergency exists, as declared by the Governor.<sup>12</sup>

Additionally, the statute sets out further requirements regarding the suspension or tolling of deadlines in Code section 38-3-62, regarding notification in Code section 38-3-63, and regarding the appeal rights of adversely affected parties in Code section 38-3-64.<sup>13</sup> In addition to these requirements, the judicial branch may transfer court business to a different facility and may extend court deadlines, provided the court specifies the “exact length of time a deadline will be extended by a judicial emergency.”<sup>14</sup> These Code sections provide guidelines and considerations for declaring an emergency and creating the Judicial Order.

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9. *Id.*

10. *Id.* An authorized judicial official could be the Chief Justice of the Supreme Court of Georgia, a chief judge of a Georgia superior court judicial circuit, or a replacement for one of the two previous officials if they become incapacitated. O.C.G.A. § 38-3-60 (2012 & Supp. 2020). Each official can act “with regard to his or her respective jurisdiction.” *Id.*

11. Judicial Emergency Order, *supra* note 4; *see also* §§ 38-3-60–64.

12. § 38-3-61.

13. §§ 38-3-62, -63, -64.

14. Judicial Emergency Order Guidance, Jud. Council of Ga. (Mar. 6, 2020), <https://georgiacourts.gov/wp-content/uploads/2020/03/Emergency-Order-Guidance-.pdf> [<https://perma.cc/7B9Q-MAW6>]; *see also* Smith v. Smith, 350 Ga. App. 647, 650, 829 S.E.2d 886, 888 (2019).

*Judicial Order Tracking*

Following Governor Kemp's declaration of a statewide emergency in Georgia, Chief Justice Melton declared a Statewide Judicial Emergency.<sup>15</sup> The Governor issued the Statewide Emergency Order on March 13, 2020.<sup>16</sup> Chief Justice Melton then issued the Statewide Judicial Emergency Order effective on March 14, 2020.<sup>17</sup>

On March 13, 2020, multiple Georgia courts issued Judicial Emergency Orders modeling the Statewide Judicial Emergency Order from the Supreme Court of Georgia.<sup>18</sup> Due to the thirty-day limitation on the Judicial Emergency Orders, the first Statewide Judicial Emergency Order terminated on April 13, 2020, at 11:59 PM.<sup>19</sup> Chief Justice Melton extended the Statewide Judicial Emergency Order on April 6, 2020, setting the Order to expire on May 13, 2020, at 11:59 PM.<sup>20</sup> On May 11, 2020, Chief Justice Melton issued a second Order extending the Statewide Judicial Emergency Order, moving the May 13, 2020, deadline to June 12, 2020, at 11:59 PM.<sup>21</sup> On June 12, 2020, Chief Justice Melton issued a

15. C.J. Melton Interview, *supra* note 5; Ga. Exec. Order No. 03.14.20.01 (Mar. 14, 2020) (on file with the Georgia State University Law Review); Judicial Emergency Order, *supra* note 4.

16. Ga. Exec. Order No. 03.14.20.01, *supra* note 15.

17. Judicial Emergency Order, *supra* note 4.

18. *See* Order Declaring Jud. Emergency (Appalachian Super. Ct. Mar. 13, 2020) (on file with the Georgia State University Law Review); Order Declaring Jud. Emergency (Atlantic Super. Ct. Mar. 13, 2020) (on file with the Georgia State University Law Review); Order Declaring Jud. Emergency (Burke Super. Ct. Mar. 13, 2020) (on file with the Georgia State University Law Review) (the Augusta Judicial Circuit issued identical Orders for Columbia County and Richmond County); Order Declaring Jud. Emergency (Chattahoochee Super. Ct. Mar. 13, 2020) (on file with the Georgia State University Law Review) (the Chattahoochee Judicial Circuit issued identical Orders for the following counties: Harris, Marion, Muscogee, Talbot, and Taylor); Order Declaring Jud. Emergency (Cherokee Super. Ct. Mar. 13, 2020) (on file with the Georgia State University Law Review); Order Declaring Jud. Emergency (Clayton Super. Ct. Mar. 13, 2020) (on file with the Georgia State University Law Review); Order Declaring Jud. Emergency (Cobb Super. Ct. Mar. 13, 2020) (on file with the Georgia State University Law Review); Order Declaring Jud. Emergency (DeKalb Super. Ct. Mar. 13, 2020) (on file with the Georgia State University Law Review); Order Declaring Jud. Emergency (Dougherty Super. Ct. Mar. 13, 2020) (on file with the Georgia State University Law Review); Order Declaring Jud. Emergency (Gwinnett Super. Ct. Mar. 13, 2020) (on file with the Georgia State University Law Review); Order Declaring Jud. Emergency (Macon Super. Ct. Mar. 13, 2020) (on file with the Georgia State University Law Review).

19. O.C.G.A. § 38-3-61 (2012); Judicial Emergency Order, *supra* note 4.

20. Order Extending Declaration of Statewide Jud. Emergency (Ga. Apr. 6, 2020) (on file with the Georgia State University Law Review) [hereinafter First Extension Order].

21. Second Order Extending Declaration of Statewide Jud. Emergency (Ga. May 11, 2020) (on file

third Order extending the Statewide Judicial Emergency Order to terminate on July 12, 2020, at 11:59 PM.<sup>22</sup> On July 10, 2020, Chief Justice Melton issued a fourth Order extending the Statewide Judicial Emergency Order to terminate on August 11, 2020, at 11:59 PM.<sup>23</sup>

### *Background*

In issuing and subsequently extending the Orders, the Supreme Court of Georgia declared a Statewide Judicial Emergency pursuant to Code section 38-3-61.<sup>24</sup> The overall purpose of the Orders was to “protect the health, safety, and liberty of all citizens in the State.”<sup>25</sup>

### *Order Declaring Statewide Judicial Emergency*

The Statewide Judicial Emergency Order declared a Statewide Judicial Emergency in the State of Georgia due to COVID-19.<sup>26</sup> The Order instructed courts to remain open for essential functions.<sup>27</sup> However, the Order left the interpretation of what functions qualify as “essential” open for the courts to decide, absent specified examples included within the Order.<sup>28</sup> The essential functions specified within the Order included: (1) cases involving immediate safety or liberty concerns; (2) “criminal court search warrants, arrest warrants, initial appearances, and bond reviews”; (3) protective and

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with the Georgia State University Law Review) [hereinafter Second Extension Order].

22. Third Order Extending Declaration of Statewide Jud. Emergency (Ga. June 12, 2020) (on file with the Georgia State University Law Review) [hereinafter Third Extension Order].

23. Fourth Order Extending Declaration of Statewide Jud. Emergency (Ga. July 10, 2020) (on file with the Georgia State University Law Review) [hereinafter Fourth Extension Order]. The Supreme Court of Georgia subsequently issued three additional extensions of the Statewide Judicial Emergency Order before October 10, 2020. Fifth Order Extending Declaration of Statewide Jud. Emergency (Ga. Aug. 11, 2020) (on file with the Georgia State University Law Review); Sixth Order Extending Declaration of Statewide Jud. Emergency (Ga. Sept. 10, 2020) (on file with the Georgia State University Law Review); Seventh Order Extending Declaration of Statewide Jud. Emergency (Ga. Oct. 10, 2020) (on file with the Georgia State University Law Review) [hereinafter Seventh Extension Order]. This *Peach Sheet* focuses only on the initial Order and the first four Extension Orders. As of October 10, the Statewide Judicial Emergency remained in effect until November 9. Seventh Extension Order, *supra*.

24. Judicial Emergency Order, *supra* note 4, at 1; *see also* § 38-3-61.

25. Judicial Emergency Order, *supra* note 4, at 1.

26. *Id.*

27. *Id.*

28. *Id.*

restraining orders in domestic abuse cases; (4) “juvenile court delinquency detention hearing and emergency removal matters”; and (5) “mental health commitment hearings.”<sup>29</sup>

The Order further stated that criminal cases that have already commenced may continue, be suspended, or declared a mistrial for good cause.<sup>30</sup> The decision to suspend or declare a mistrial was left to the presiding judges.<sup>31</sup> The Order also recommended allowing videoconferencing wherever possible for open matters.<sup>32</sup>

Lastly, the Order suspended, tolled, extended, and granted relief for all deadlines and filing requirements in both civil and criminal cases.<sup>33</sup> The Order gave eleven examples of deadlines where such relief may be appropriate: statute of limitations; deadlines to issue warrants; speedy trial time frames; commitment hearing time frames; juvenile detention deadlines; time frames for bills of indictment or accusations or “to bring a matter before a grand jury”; time to file writs of habeas corpus; discovery deadlines; service deadlines on opposing parties; timelines to appeal orders, rulings, or “other determination[s]”; and any other legal proceedings deemed necessary by “authorized judicial official[s].”<sup>34</sup>

#### *Order Extending Statewide Judicial Emergency Order*

The Order Extending the Statewide Judicial Emergency Order (First Extension Order) extended the first Statewide Judicial Emergency Order and reminded all lawyers “of their obligations of professionalism.”<sup>35</sup> Additionally, the First Extension Order encouraged courts to be “consistent with public health guidance” and to use videoconferences to “reduce backlogs when the judicial emergency ends.”<sup>36</sup>

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29. *Id.*

30. *Id.* at 2.

31. Judicial Emergency Order, *supra* note 4, at 2.

32. *Id.*

33. *Id.*

34. *Id.*

35. First Extension Order, *supra* note 20, at 1.

36. *Id.*

*Second Order Extending Statewide Judicial Emergency Order*

The Second Order Extending the Statewide Judicial Emergency Order (Second Extension Order) further extended the first Statewide Judicial Emergency Order and provided additional guidelines for Georgia courts.<sup>37</sup>

*Section 1*

The Second Extension Order directed lower courts to various documents providing guidance on the application of the Order, including guidance on grand jury proceedings, continued authority of grand juries, deadlines and time limits, tolling statutes of limitations, tolling of filing deadlines, amendments to court rules, and guidance on judiciary response to COVID-19.<sup>38</sup> The Second Extension Order reminded judges that they still had authority to reinstitute deadlines on a “case-specific basis.”<sup>39</sup>

*Section 2*

The Second Extension Order also prohibited all courts from summoning new jurors for any purpose.<sup>40</sup> For instances where grand juries were already impaneled, the courts were instructed not to assemble the grand juries except “when necessary.”<sup>41</sup>

*Section 3*

The Second Extension Order highlighted the importance of using videoconferencing and teleconferences.<sup>42</sup> The Second Extension Order gave courts the authority to compel “litigants, lawyers,

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37. Second Extension Order, *supra* note 21, at 2.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 3.



witnesses, and other essential personnel” to participate in remote judicial proceedings.<sup>43</sup>

#### *Section 4*

The Second Extension Order also allowed courts to begin to conduct non-essential, in-person judicial proceedings, but only if in compliance with public health guidance.<sup>44</sup> The Order instructed lower courts to provide guidelines to the public before “conducting extensive in-person proceedings.”<sup>45</sup> For support in developing these guidelines, the court assembled a Judicial COVID-19 Task Force.<sup>46</sup>

#### *Section 5*

Pursuant to Code sections 38-3-61 and 38-3-62, Section 5 of the Second Extension Order stated that chief judges maintained discretion to declare more restrictive local judicial emergencies, but courts could not disregard the restrictions imposed by the Order.<sup>47</sup>

#### *Section 6*

The Second Extension Order highlighted how judges could reinstitute or establish deadlines on a case-by-case basis.<sup>48</sup> To reinstitute or establish deadlines on a case, a judge had to enter a written order in the record for the case identifying the deadlines that were imposed.<sup>49</sup> The Second Extension Order encouraged courts to consider reinstating deadlines only in matters with insignificant in-person contact, “such as deadlines for filing and responding to pleadings, motions, and briefs, written discovery in civil cases, scheduling of depositions that may be taken remotely or require few

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43. Second Extension Order, *supra* note 21, at 3.

44. *Id.*

45. *Id.* at 4.

46. *Id.* at 4–5.

47. *Id.* at 4.

48. *Id.* at 5.

49. Second Extension Order, *supra* note 21, at 5.

participants, and scheduling of hearings requiring only legal argument or few participants.”<sup>50</sup>

### *Section 7*

The Second Extension Order established a Judicial COVID-19 Task Force to help courts conduct remote proceedings and “[restore] more in-court proceedings,” and the Second Extension Order also welcomed comments from the legal field and the general public to be submitted to the Judicial COVID-19 Task Force.<sup>51</sup>

### *Section 8*

Section 8 of the Second Extension Order reminded all attorneys of their obligations of professionalism and all judges of “their obligation to dispose of all judicial matters promptly and efficiently,” while also being sensitive to health and other concerns raised by “court officials, litigants and their lawyers, witnesses, and others.”<sup>52</sup>

### *Section 9*

Section 9 of the Second Extension Order outlined that notice would be provided at least one week in advance of the termination of the Order to “allow courts to plan for the transition to fuller operations.”<sup>53</sup>

### *Third Order Extending Statewide Judicial Emergency Order*

The Third Order Extending the Statewide Judicial Emergency Order (Third Extension Order) extended the Second Extension Order and also provided additional guidelines for the lower courts.<sup>54</sup> The

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50. *Id.*

51. *Id.*

52. *Id.* at 6.

53. *Id.*

54. Third Extension Order, *supra* note 22, at 2.

sections listed below are the sections that differ from the Second Extension Order.

### *Section 2*

Section 2 reinstated all previously suspended, tolled, or extended deadlines as of July 14—with the exception of jury trials—and, in so doing, provided the following guidance.<sup>55</sup> For all matters, new deadlines (except for jury trials) could be calculated by adding exactly 122 days to the previous deadline (this same calculation applied to extensions).<sup>56</sup> For example, a previous deadline of March 20 would be extended by four months, making the new deadline July 20.<sup>57</sup> Normal deadlines applied for all cases filed after July 14, 2020.<sup>58</sup> For deadlines falling on weekends or holidays, the next business day became the new deadline.<sup>59</sup> The 122 days between March 14 and July 14 did not count towards the calculation of the statute of limitation.<sup>60</sup> Litigants could still apply for extensions of deadlines for good cause.<sup>61</sup> Deadlines normally imposed on the courts, however, remained suspended and tolled.<sup>62</sup> To assist with clearing the backlog of cases, judges could begin to reinstitute deadlines on a case-by-case basis.<sup>63</sup>

### *Section 4*

Section 4 allowed in-person judicial proceedings but required compliance with public health guidance.<sup>64</sup> Section 4 also highlighted a reopening guide from the Judicial COVID-19 Task Force for courts to use as a template.<sup>65</sup> Finally, Section 4 required that each court

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55. *Id.* at 3.

56. *Id.* at 3–4.

57. *Id.* at 3.

58. *Id.*

59. *Id.* at 4.

60. Third Extension Order, *supra* note 22, at 4.

61. *Id.*

62. *Id.*

63. *Id.* at 5.

64. *Id.* at 6.

65. *Id.*

develop and submit operating guidelines to show how in-court proceedings would be conducted to protect the health of litigants, lawyers, and court personnel.<sup>66</sup>

### *Section 6*

Section 6 highlighted that the appendices included documents providing guidance for courts to help clarify what qualify as “particular contexts.”<sup>67</sup>

### *Fourth Order Extending Statewide Judicial Emergency Order*

The Fourth Order Extending the Statewide Judicial Emergency Order (Fourth Extension Order) extended the Third Extension Order and also provided additional guidelines for the lower courts.<sup>68</sup> The sections from the Fourth Extension Order listed below are the sections that differ from the Third Extension Order.

### *Section 2*

Section 2 remained generally the same as the previous Orders, though it emphasized that deadlines imposed by case-specific orders superseded deadlines from the statewide Order.<sup>69</sup> Section 2 also mentioned that orders or decrees in divorce or adoption cases “shall not be invalid based on any suspension or tolling of the applicable period by the March 14 Order as extended.”<sup>70</sup>

### *Section 4*

Section 4 remained mostly the same; however, the Fourth Extension Order emphasized that no court could compel “the attendance of any person” if the court facility did not comply with the

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66. Third Extension Order, *supra* note 22, at 7.

67. *Id.* at 8.

68. Fourth Extension Order, *supra* note 23, at 2–3.

69. *Id.* at 3–5.

70. *Id.* at 5.

Fourth Extension Order or public health guidelines.<sup>71</sup> Courts could refer to the reopening guide in the appendix and guidance from the Centers for Disease Control and Prevention or the Department of Public Health (DOH).<sup>72</sup> The court's operating guidelines required the "isolation of any person with known or suspected COVID-19 and quarantine of any person with COVID-19 exposure . . . ." <sup>73</sup> The courts were required to notify any person who might have been exposed to the virus, as directed by the DOH.<sup>74</sup> Courts that shared facilities with other courts were instructed to coordinate guidelines.<sup>75</sup>

### *Analysis*

#### *Unintended Consequences*

Although some consequences of the Judicial Emergency could be predicted, the sudden effect of COVID-19 and court closures led to confusion and unanticipated consequences.<sup>76</sup> Attorneys adapted to the closures by implementing videoconferencing and other online options for communication with the courts. Certain areas of law, however, faced greater impact due to the closures. For example, the Judicial Emergency Orders tolled deadlines and advised courts to use discretion when deciding which dispossessory action and eviction cases to call for a hearing.<sup>77</sup> Unlike some other states, the Judicial Council decided not to prohibit the filing of evictions because the Judicial Council did not believe that Code sections 38-3-60–64 authorized such a prohibition but instead believed that adequate protection existed within the discretion provided to the judges.<sup>78</sup>

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71. *Id.* at 6–8.

72. *Id.* at 7.

73. *Id.*

74. Fourth Extension Order, *supra* note 23, at 7.

75. *Id.* at 7–8.

76. See *Pandemic Disrupts Justice System, Courts*, A.B.A. (Mar. 16, 2020), <https://www.americanbar.org/news/abanews/aba-news-archives/2020/03/coronavirus-affecting-justice-system/> [<https://perma.cc/VYB7-VSRT>]. Consequences such as an increased backlog of cases and delays could be expected, though the full scope of the effect of the court closures could not be predicted.

*Id.*

77. C.J. Melton Interview, *supra* note 5.

78. *Id.*

However, some lawyers believed that suspending eviction actions could have benefitted those directly affected by the actions initially.<sup>79</sup>

Cole Thaler, Co-Director of the Atlanta Volunteer Lawyers Foundation's (AVLF) Safe and Stable Homes Project, believed a court prohibition on the filing of dispossessory cases would have helped tenants.<sup>80</sup> He noticed that some landlords filed cases and falsely claimed to have “‘served’ the filings on their tenants,” which created confusion with the tenants.<sup>81</sup> Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, a landlord who received federal loans or subsidies could not file an eviction action for 120 days from the enactment of the CARES Act.<sup>82</sup> Further, the Supreme Court of Georgia created Uniform Superior Court Rule 49 and Magistrate Court Rule 46, requiring landlords to provide thirty-day notice before filing an eviction action and clarifying that landlords cannot serve notice of such actions until after July 26—the 120-day deadline—if the landlord falls within the CARES Act requirements.<sup>83</sup> The rules also required landlords filing actions before August 25 to submit verification confirming that they were not subject to the restrictions of the CARES Act.<sup>84</sup>

Even though the CARES Act prohibited certain landlords from filing eviction actions during the specified period, some landlords still filed or “‘served” invalid notice upon their tenants.<sup>85</sup> For example, one landlord covered under the CARES Act still filed eight

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79. Electronic Mail Interview with Cole Thaler, Co-Dir. Safe & Stable Homes Project, Atlanta Volunteer Laws. Found. (May 26, 2020) (on file with the Georgia State University Law Review) [hereinafter Thaler Interview].

80. *Id.*

81. *Id.*

82. Alana Semuels, *Renters Are Being Forced from Their Homes Despite Eviction Moratoriums Meant to Protect Them*, TIME (Apr. 15, 2020, 2:47 PM), <https://time.com/5820634/evictions-coronavirus/> [https://perma.cc/7UAG-49LA]; see also Meris Lutz, *Lack of Eviction Ban Leaves Georgia Renters Vulnerable*, ATLANTA J.-CONST. (May 1, 2020), <https://www.ajc.com/news/local/lack-eviction-ban-leaves-georgia-renters-vulnerable/5VJi2rKnREhRJJszxdRQLP/> [https://perma.cc/4S4F-LPQB]. The CARES Act is an economic relief package passed by Congress to lessen the impacts of COVID-19. Coronavirus Aid, Relief, and Economic Stability Act, Pub. L. No. 116-136, § 3215, 134 Stat. 281, 374 (2020) (to be codified at 15 U.S.C. §§ 9001–80).

83. SUP. CT. OF GA. UNIF. RULES, SUPERIOR CT. R. 49 (Apr. 30, 2020) (on file with the Georgia State University Law Review) [hereinafter Rule 49]; SUP. CT. OF GA. UNIF. RULES, MAGISTRATE CT. R. 46 (Apr. 30, 2020) (on file with the Georgia State University Law Review) [hereinafter Rule 46].

84. Rule 49, *supra* note 83; Rule 46, *supra* note 83.

85. Lutz, *supra* note 82; see also Thaler Interview, *supra* note 79.

eviction actions against tenants for nonpayment.<sup>86</sup> Landlords who could still lawfully serve notices of eviction under the CARES Act still filed and served such actions; this practice created confusion among tenants, who struggled to determine whether landlords could lawfully file actions because no central database existed to show which landlords were covered by the CARES Act.<sup>87</sup> Because many of the landlords who had the right to file still faced long waits and delayed deadlines, some lawyers suggested that halting the filing of eviction actions may have been a better result because it would have cleared up confusion.<sup>88</sup>

Further, challenges with landlord-tenant actions arose during this time.<sup>89</sup> The AVLf noted a higher number of calls from tenants whose landlords allegedly illegally evicted them or threatened an illegal eviction.<sup>90</sup> Court closures during COVID-19 presented a challenge because illegal evictions occurred nationwide, leaving tenants locked out of their homes or with their belongings thrown in the streets.<sup>91</sup> Normally, a landlord seeking to enforce a legal eviction or a tenant threatened by an illegal eviction could seek relief in court.<sup>92</sup> Due to the long COVID-19-related delays, though, the threat of a lawsuit carried less weight because parties were less sure of when relief would be granted.<sup>93</sup>

Tenants were not the only people affected by the court closures.<sup>94</sup> Landlords also faced additional challenges as a result of the closures.<sup>95</sup> Due to the limits on evictions and the economic struggles during the pandemic, landlords received less rent than before, and many struggled to find a remedy.<sup>96</sup> Landlords' rent collections

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86. Lutz, *supra* note 82.

87. *Id.*

88. Thaler Interview, *supra* note 79.

89. *Id.*

90. *Id.*

91. Semuels, *supra* note 82.

92. Thaler Interview, *supra* note 79.

93. *Id.*

94. Conor Dougherty, *31% Can't Pay the Rent: 'It's Only Going to Get Worse,'* N.Y. TIMES, <https://www.nytimes.com/2020/04/08/business/economy/coronavirus-rent.html> [https://perma.cc/6SEU-6XAA] (May 27, 2020).

95. *Id.*

96. *Id.*

plunged during the pandemic across different areas in the nation.<sup>97</sup> In one study, the National Multifamily Housing Council tracked the rent payments of 13.4 million units across the nation.<sup>98</sup> The study found that “through the first five days of April, 31 percent of tenants had so far failed to pay their rent, compared with 18 percent in the same period a year ago.”<sup>99</sup> Landlords of all sizes struggled, but the lack of rent especially affected individual landlords and landlords with few rental properties.<sup>100</sup> In the United States, roughly 8 million individual landlords “own and manage half [of] the rental properties in the nation and house about 48 million renters.”<sup>101</sup> Unlike larger companies, these individual landlords may not have the money to cover costs when the tenants cannot pay rent.<sup>102</sup> Though the CARES Act allowed certain landlords to file eviction actions, the Act still provided little relief for landlords.<sup>103</sup> For instance, courts in Georgia stalled many dispossessory actions.<sup>104</sup> The Judicial Emergency Order suspended nonessential matters, which included many eviction proceedings.<sup>105</sup> While landlords could file eviction actions, they might not quickly see relief.<sup>106</sup> However, courts began exploring an option that may prove to benefit both the landlords and tenants: the use of videoconferencing.

#### *Possible Future Path to Reopening—Videoconferencing*

The growing problem presented by evictions during the pandemic will not be an easy one to fix. Landlords and tenants alike struggled to find the funds to pay their bills, and some called for federal relief to solve this problem.<sup>107</sup> However, one option that may help relieve

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97. *Id.*

98. *Id.*

99. *Id.*

100. Diana Olick, *Small Landlords Struggle As Renters Either Can't or Choose Not to Pay Amid Coronavirus Layoffs*, CNBC, <https://www.cnbc.com/2020/04/02/coronavirus-small-landlords-struggle-as-renters-stop-payments.html> [<https://perma.cc/5PK4-542P>] (Apr. 2, 2020, 1:32 PM).

101. *Id.*

102. *Id.*

103. Lutz, *supra* note 82.

104. *Id.*

105. Judicial Emergency Order, *supra* note 4, at 1.

106. Lutz, *supra* note 82.

107. See Marisa Peñalosa, *Rent Is Due Today, but Millions of Americans Won't Be Paying*, NPR



some of the problems as the courts reopen is using videoconferencing tools to run eviction hearings. Although this practice would not help tenants who simply cannot afford to pay rent, courts could utilize these tools to help bring some clarity to the overall process by providing more structure, and the tools may allow the courts to bring quicker relief in cases stalled as a result of the court closures. A wrongfully evicted tenant or a landlord who needs and has the ability to evict a tenant could benefit from this option because of the expediency of videoconferencing. Additionally, videoconferencing adds a sense of structure to the eviction process, alleviating some of the concerns of tenants regarding what is or is not allowed during this time.

#### *Use of Videoconferencing in Other States*

When crafting the Judicial Emergency Order, the Supreme Court of Georgia relied more on the Judicial Emergency Act rather than considering the Emergency Orders of other states.<sup>108</sup> However, the Court was aware of, and noted, the actions other states took.<sup>109</sup> States across the country reduced or eliminated jury trials and minimized in-person proceedings while still finding ways to keep the courts open.<sup>110</sup> Considering the actions of other states, the Supreme Court of Georgia enacted new procedures to attempt to lighten the consequences of the court closures.<sup>111</sup>

While figuring out how best to reopen, the Judicial Council engaged with other states to understand different approaches to videoconferencing.<sup>112</sup> The National Center for State Courts has several subcommittees that have discussed the use of videoconferencing and will likely continue to use the technology in

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(May 1, 2020, 5:01 AM), <https://www.npr.org/2020/05/01/848247228/rent-is-due-today-but-millions-of-americans-wont-be-paying> [<https://perma.cc/PZH4-CG8Y>].

108. C.J. Melton Interview, *supra* note 5.

109. *Id.*

110. *Id.*; see also *State Court Closures in Response to the Coronavirus (COVID-19) Pandemic, 2020*, BALLOTEDIA, [https://ballotpedia.org/State\\_court\\_closures\\_in\\_response\\_to\\_the\\_coronavirus\\_\(COVID-19\)\\_pandemic,\\_2020](https://ballotpedia.org/State_court_closures_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020) [<https://perma.cc/4FGM-Q7V5>] (July 8, 2020).

111. C.J. Melton Interview, *supra* note 5.

112. *Id.*

the future.<sup>113</sup> For example, Texas uses videoconferencing technology for court-related matters.<sup>114</sup> The Texas Office of Court Administration released a guidance document allowing any proceeding other than jury trials to be conducted remotely and recommending judges and clerks to use teleworking methods when possible.<sup>115</sup> Counties, such as Bexar County's civil district, even began hearing cases remotely.<sup>116</sup>

In addition to looking outside to other states, Georgia courts experimented with videoconferencing as well.<sup>117</sup> Before COVID-19, Georgia courts used videoconferencing tools for certain functions such as pre-trial or post-trial civil proceedings under certain limitations.<sup>118</sup> During the Judicial Emergency, however, advocates proposed certain bills to try and allow for more videoconferencing in Georgia courts.<sup>119</sup> Advocates proposed Senate Bill (SB) 344 to make videoconferencing proceedings more common and to expand the use of the technology for pre and post-trial proceedings.<sup>120</sup> SB 344 was rejected, however.<sup>121</sup> Nonetheless, the Judicial Emergency Orders contemplate that more courts could utilize videoconferencing for certain proceedings.<sup>122</sup> Indeed, it could be the answer to some of the issues with dispossessory cases.

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113. *Id.*

114. *Id.*

115. Angela Morris, *Here Are the Latest Updates from Texas Courts Regarding Coronavirus*, LAW.COM, <https://www.law.com/texaslawyer/2020/03/12/here-are-the-latest-updates-from-texas-courts-regarding-coronavirus/> [<https://perma.cc/RG4V-4QXA>] (Mar. 27, 2020, 4:01 PM).

116. *Id.*

117. *Georgia Courts Consider Video Trial Amid Pandemic*, CHILIVIS GRUBMAN DALBEY & WARNER (May 18, 2020), <https://cglawfirm.com/2020/05/18/georgia-courts-consider-video-trials-amid-pandemic/> [<https://perma.cc/5VLW-5Y3D>].

118. *Id.*

119. Jill Nolin, *Ga. House Nixes Plan for Courts to Make Some Procedures Virtual*, GA. RECORDER (June 25, 2020), <https://georgiarecorder.com/brief/ga-house-nixes-plan-for-courts-to-make-some-procedures-virtual/> [<https://perma.cc/GQN9-7QVS>].

120. *Id.*; SB 344, as passed Senate, 2020 Ga. Gen Assemb.

121. Nolin, *supra* note 119.

122. First Extension Order, *supra* note 20, at 1.

*Videoconferencing in Eviction Hearings*

Many courts in Georgia are trying to hold hearings through videoconferencing.<sup>123</sup> Videoconferencing provides many advantages by allowing courts to run without having to bring people into the courthouse and could help the courts to begin to tackle the numerous eviction cases that piled up as a result of COVID-19.<sup>124</sup> However, some challenges exist with its use in certain areas.

For instance, Judge Brendan Murphy, Chief Magistrate of Cobb County, circulated a press release on July 14 detailing some of the use of videoconferencing in Cobb County and gave an update on dispossessory cases.<sup>125</sup> For the month of July, the Magistrate Court of Cobb County planned on hearing some dispossessory cases; however, the court ultimately cancelled all landlord/tenant calendars for that month.<sup>126</sup> Though the court would consider any “Extraordinary Motion for Dispossessory Trial during the Judicial Emergency,” the court primarily postponed landlord/tenant hearings.<sup>127</sup> The postponing was largely due to the courts having limited equipment to complete videoconferencing hearings.<sup>128</sup> Even in a larger county like Cobb, the limited equipment was “fully used for essential functions including first appearance hearing, criminal pleas, probable cause and bond/bond revocation hearings, and domestic violence/stalking Temporary Protective Order (TPO) hearings.”<sup>129</sup> Furthermore, some poorer tenants and landlords may

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123. Jan Skutch, *Chatham County State Court Tests Video Conferencing Handle Caseload During Coronavirus Pandemic Future*, SAVANNAH MORNING NEWS (May 12, 2020, 8:27 AM), <https://www.savannahnow.com/news/20200512/chatham-county-state-court-tests-video-conferencing-to-handle-caseload-during-coronavirus-pandemic-future> [https://perma.cc/K9XD-HEMD]; Chief Magistrate Brendan F. Murphy, *Magistrate Court: COVID-19 Updates*, COBB CNTY. GOV., <https://www.cobbcounty.org/courts/magistrate-court/magistrate-court-covid-19-updates> [https://perma.cc/X4L9-6BR7]; Standing Order on Proceedings During and Following Statewide Judicial Emergency (Magis. Ct. of Fulton Cnty. July 13, 2020) (on file with the Georgia State University Law Review) [hereinafter Fulton Standing Order].

124. Skutch, *supra* note 123.

125. Murphy, *supra* note 123.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

have lacked the needed equipment to participate in a videoconference hearing, especially in more rural counties.<sup>130</sup>

Additionally, in Fulton County, videoconferencing proved to have some challenges.<sup>131</sup> A Standing Order issued by the Magistrate Court of Fulton County delayed all in-person hearings until at least November.<sup>132</sup> However, virtual hearings could have relieved some of the pressure of the eviction filings by letting the court to begin to hear cases.<sup>133</sup> The court could not have a virtual hearing unless both parties consent.<sup>134</sup> If one party refused to consent, the court would postpone the hearing until at least November for an in-person hearing, which would allow a party to easily delay the hearing of a case.<sup>135</sup>

Overall, the use of videoconferencing tools may be expanded in Georgia due to the Judicial Emergency, and the Supreme Court of Georgia was currently examining its options as of October 2020.<sup>136</sup> These options could help relieve some of the mounting eviction cases and provide help to landlord and tenants. However, the changes may be met with resistance, and a full picture of the impact and challenges with this technology will not be seen until the courts begin to use it more. In order to relieve some of the burden on the courts, landlords, and tenants, it is important to find ways to expand the use of this technology to further open the courts.

### *Conclusion*

Due to COVID-19, multiple Judicial Emergency Orders have been issued in the State of Georgia.<sup>137</sup> Courts, judges, attorneys, and litigants have had to learn to adapt to the COVID-19 outbreak by

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130. Lauren Sudeall et al., *Courts in Crisis: Exploring the Impact of COVID-19 on Eviction Court in Georgia*, GA. ST. U. COLL. OF L. CTR. FOR ACCESS TO JUST. (May 2020), <https://law.gsu.edu/document/courts-in-crisis-exploring-the-impact-of-covid-19-on-eviction-court-in-georgia/?wpdmdl=199029> [<https://perma.cc/8J8C-MVT8>].

131. Fulton Standing Order, *supra* note 123.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. C.J. Melton Interview, *supra* note 5.

137. See discussion *supra* Section *Judicial Order Tracking*.

turning to guidance in the Judicial Emergency Orders and by relying on technology.<sup>138</sup> Now that courts have been exposed to extensive use of videoconferencing tools, the question remains whether this technology will continue to be fully used in the future.<sup>139</sup>

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138. See discussion *supra* Parts *Background, Analysis*.

139. See discussion *supra* Part *Analysis*.