



SUPREME COURT OF GEORGIA

January 5, 2023

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

The Court hereby adopts the following amendments to Uniform Superior Court Rule 9 (relating to virtual court proceedings), Rule 9.1 (relating to virtual events – court proceedings) and Rule 9.2 (relating to virtual events – generally) to clarify the process for conducting virtual court proceedings. **These amendments shall take effect on March 1, 2023, and shall read as follows:**

Rule 9. VIRTUAL PROCEEDINGS

Rule 9.1. Virtual Events; Court Proceedings

(A) Definitions. “Virtual event” means a meeting or conference conducted by telephone; or any meeting, conference, or court proceeding conducted by video; and shall include any such meeting, conference, or proceeding that includes all participants appearing virtually; as well as hybrid events where there is a mix of live and virtual participation.

(B) Consent. Any event in any civil or criminal court proceeding may be conducted pursuant to USCR 9.2 as a virtual event if it is done with the consent of the parties and by agreement of the court. Absent consent, the following provisions apply.

(C) Criminal Proceedings. All matters in criminal cases, excluding trials, may be conducted pursuant to USCR 9.2 except those for which the Constitution or other law requires in-person

proceedings. Permissible matters include, but are not necessarily limited to, the following:

- (1) Determinations of indigence and appointments of counsel;
- (2) Hearings on appearance and appeal bonds;
- (3) Initial appearance hearings;
- (4) Probable cause hearings;
- (5) Applications for arrest warrants;
- (6) Applications for search warrants;
- (7) Arraignments or waivers of arraignment;
- (8) Pre-trial diversion and post-sentencing compliance hearings;
- (9) Entry or change of pleas in criminal cases;
- (10) Impositions of sentences upon pleas of guilty or nolo contendere;
- (11) Probation revocation hearings in cases in which the probationer admits the violation;
- (12) Post-sentencing proceedings in criminal cases;
- (13) Acceptance of special pleas of insanity (incompetency to stand trial);
- (14) Situations involving inmates with highly sensitive medical problems or who pose a high security risk upon the court making findings as may be required by law;
- (15) Testimony of youthful witnesses upon the court making findings as may be required by law;
- (16) Appearances of interpreters; and
- (17) Status hearings or docket calls.

This rule does not abrogate any constitutional right that requires in-person proceedings. Notwithstanding any other provisions of this rule, a judge may order a defendant's personal appearance in court for any hearing.

(D) Civil Proceedings. All matters in civil cases may be conducted pursuant to USCR 9.2, except trials. These matters include but are not necessarily limited to, the following:

- (1) Depositions;
- (2) Default proceedings;
- (3) Damages hearings;
- (4) Pre-trial conferences;
- (5) Show cause (rule nisi) dockets;
- (6) Motion hearings;
- (7) Appeal bond and supersedeas proceedings;
- (8) Traverse hearings;
- (9) Foreign judgments proceedings;
- (10) Enforcement and revival of judgments proceedings;
- (11) Notwithstanding the prohibition on virtual proceedings for trials, the following proceedings related to trials may be conducted pursuant to USCR 9.2:
 - (a) Pre-trial motions;
 - (b) Motions for directed verdict;
 - (c) Proposed jury charge conferences;
 - (d) Post-trial motions; and

- (e) Any other proceedings with the consent of all parties;
- (12) Primary and election day proceedings pursuant to OCGA § 21-2-412;
- (13) Ex-parte applications for Temporary Protective Orders under the Family Violence Act and the Stalking Statute, and subsequent proceedings; and
- (14) Appearances of interpreters.

(E) Effective Date. This rule shall be effective for any virtual event taking place on or after March 1, 2023.

Rule 9.2. Virtual Events; Generally

(A) Facilitation of Virtual Events. The trial judge authorizing the virtual event may specify:

- (1) The time and the person who will initiate the virtual event;
- (2) The party which is to incur the initial expense of the virtual event, if any, or the apportionment of such costs among the parties, while retaining the discretion to make an adjustment of such costs upon final resolution of the case by taxing same as a part of the costs; and
- (3) Any other matter or requirement necessary to accomplish, facilitate, or control the virtual event.

(B) Confidential Attorney-Client Communications. Provisions shall be made to preserve the confidentiality of attorney-client communications and privilege in accordance with Georgia law. In all criminal virtual events, the defendant and defense counsel shall be provided with a private means of communications when in different locations.

(C) Recording of Hearings. A record of any proceedings conducted by virtual event shall be made in the same manner as all such similar proceedings not conducted by virtual event. Any recording of a virtual event shall be governed by USCR 21 and 22.

(D) Witnesses. In any virtual event conducted by video, or any in-person proceeding, a witness may testify virtually via video.

(1) In civil matters, the discretion to allow testimony virtually via video shall rest with the trial judge.

(2) In any criminal matter, an objection to a witness testifying virtually via video shall be sustained; however, such objection shall act as a motion for continuance.

(E) Technical Standards for Virtual Events Via Video. Any video-conferencing system utilized under this rule must conform to the following minimum requirements:

(1) All participants must be able to see, hear, and communicate with each other simultaneously;

(2) All participants must be able to see, hear, and otherwise observe any physical evidence or exhibits presented during the proceeding, either by video, facsimile, or other method; and

(3) Video quality must be adequate to allow participants to observe each other's demeanor and nonverbal communications.

(F) Public Access and Open Court. It is the policy of Georgia's courts to promote access to open court proceedings for participants, the general public, and news media. A court is open when the public is able to access court when a judge is presiding. For any virtual event that would otherwise be in open court and publicly accessible, if the event were conducted live, the virtual event shall constitute open court, subject to any constitutional restrictions, provided that:

(1) If the location from which the trial judge is presiding is not accessible to the public, timely notice shall be given to the parties and the public that a proceeding will occur wholly virtually;

(a) Such notice may be given to the public by an unrestricted website posting, on the court's publicly accessible docket, or similar means.

(b) In the event a court provides public access to a livestream of all proceedings to which the right of open, publicly accessible court applies, the livestream may constitute such notice, provided that notice of the livestream itself is also provided through the websites of one or more of the following: the court; the clerk of court; the Council of Superior Court Judges; or the local bar association(s), if any.

(2) If a party or a member of the public objects to the remote proceeding, the court shall sustain or overrule such objection prior to conducting the proceeding; and

(3) The public shall be given an opportunity to view the virtual event, such as by joining the video conference (although unable to participate), through a livestream, or through substantially similar means.

(G) Effective Date. This rule shall be effective for any virtual event taking place on or after March 1, 2023.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 . Clerk