

Draft Video Trial Rule for Public Comment

Given the impact COVID-19 has had on traditional court proceedings, and in the interest of enabling cases to proceed where possible, the Council of Superior Court Judges has drafted an amendment to Uniform Superior Court Rule 9.1 that would authorize civil non-jury trials to be conducted by video conference. This rule would allow such trials only in cases to which the constitutional right to trial by jury does not apply, or in which the parties have waived their right to a jury trial. The rule would remain in effect for 180 days past the expiration of the Chief Justice's Judicial Emergency Declaration and any extensions or modifications thereto. The Supreme Court now solicits comments from the bench, bar, and public regarding this draft rule. Please submit any comments no later than 4 pm on Wednesday, May 6, by email to rules@gasupreme.us.

Draft USCR 9.1 reads as follows:

Rule 9.1. Telephone or Video Conferencing

The trial court on its own motion or upon the request of any party may in its discretion conduct civil pre-trial proceedings, ~~or~~ post-trial proceedings, and non-jury trials by telephone or video conference with attorneys for all affected parties, and with the parties and all necessary witnesses in the case of trials or other adjudications. The trial judge may specify:

(A) The time and the person who will initiate the conference;

(B) The party which is to incur the initial expense of the conference ~~and~~, 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 part of the costs; ~~and~~

(C) Any other matter or requirement necessary to accomplish or facilitate the telephone or video conference; and

(D) As it relates to trials in non-jury matters, this rule shall be applicable only to civil cases where there is no right to a jury trial, where a party has not demanded a jury trial as required by law, or where the parties have waived the right to a jury trial as provided by law. Provision shall be made to preserve the confidentiality of attorney-client communications and privilege in accordance with Georgia law. All trials conducted under this Rule shall comply with all applicable constitutional requirements, including due process and public access requirements. To ensure public access, the following requirements shall apply to trials conducted under this Rule:

(1) Notice shall be given to the parties and the public that a proceeding will occur wholly by remote video conference.

(a) Such notice may be given by a website posting or similar means.

(b) In the event a court provides public access to a livestream of all proceedings to which the right of open courts applies, the livestream may constitute such notice, provided that notice of the livestream itself is provided through the websites of one or more of the following: the court; the clerk of court; the Council of Superior Court Judges; and 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.

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