

A COURT'S NIGHTMARE

By Chief Justice Carol Hunstein and Justice Harold Melton
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It's Monday morning, Nov. 9th, 2009. You arrive at work a few minutes before 8, grateful you still have a job and relieved that last week's election is behind you. This is the first year as a superior court judge that you had a bona fide challenger, but you prevailed. As you unlock the door to your chambers, the phone on your secretary's desk is ringing. You answer, a little surprised she's not in yet. The first call is from a citizen who has been summoned for jury duty and wants to know where and when he should report. You can't even get the coffee maker going before the phone rings again. Where is your secretary? This time, it's your clerk. Her daughter is sick – very sick – and they are on their way to the emergency room. But you have court today, and you haven't a clue how to access the case management system. Who will print out the docket so you know which case comes first? The phone is now ringing rapid-fire. Another call from a member of the public: He has a DUI before the court today, but given the governor's announcement last night, he's asking if there will even be court today.

“What announcement?” you ask.

For more than a year, the Georgia “Judicial Emergency Management Committee” has been working hard to make sure that our courts could continue to operate in the event of a global pandemic. Chaired by Georgia Supreme Court Justice Harold Melton, the Committee has created tools that are now available to help you prepare. Whether you are a judge, clerk, court administrator, sheriff, parole officer or some other officer of the judicial system, if you have not yet put in writing a plan to respond, wait much longer, and it may be too late.

Consider the news of the last three months: April 21, the CDC announces that an unknown strain of swine flu has popped up in two people in California. Three days later, Mexico announces hundreds of cases and 68 deaths. June 12, in a stunning announcement, the World Health Organization declares the seven-week old “H1N1” swine flu virus a global pandemic, meaning it is now capable of infecting as many as one-third of the world's population. By mid-June, the U.S. has 13,000 cases. But other, more reassuring, accounts soon follow: stories that the virus is less lethal than initially expected and news that a vaccine could be available as early as fall. We were lucky, because that first surge hit at the end of the school year. But in recent weeks, the news has again shifted. July 13: The virus needed for the vaccine is growing half as fast as ordinary strains. It is unlikely a vaccine will

be ready by fall, and that is when the second surge of swine flu is due to hit. And there is one other new dire warning that seems to have been eclipsed by other news of the day.

So what does all of this mean to you? It means you could be suddenly looking at a reduction in force of 40 percent or more. Let's go back to the fictional scenario:

As your phone continues to ring, the county sheriff suddenly appears at your door. You and he have been friends for years, and you can tell from his expression something's wrong. He throws down the morning paper on your desk, and you read the headline stripped across the top of the page: "Governor Declares Public Health State of Emergency." But it's the subheading that makes your blood run cold: "Surge in Mortality Expected." "Judge, we've got a problem," the sheriff says. He tells you that on Friday night, one of the jail inmates became sick with high fever, chills, nausea and a hacking cough. To be on the safe side, he sent him to the hospital. This 25-year-old man, the sheriff has just learned, is now dead.

What should he do, he asks you. He doesn't want to sound like an alarmist, but over the weekend, more inmates started exhibiting flu-like symptoms. He would separate them, but as you already know, the jail is overcrowded. Should he quarantine the sick ones and put the others in another part of the jail? And what do you want him to do with the defendants due in court this morning? Should he still bring them to the court building where people are already showing up for jury duty and other court appearances? Do you want them in your courtroom, putting their hands on your Bible and you and everyone else at risk? He's also worried about his officers, who have no face masks, no gloves, no hand sanitizer or any other kind of personal protective equipment. What does he do if they refuse to come to work? You're beginning to wonder whether you have the authority to require the officers, or your own staff for that matter, to work in a contagious environment.

Suddenly someone rings the bell at the front desk, wanting to pay a traffic fine. The phone rings and you pick it up. It's your secretary calling. She is unable to get out of bed.

You sense a disaster looming, but you don't even realize that in just two weeks, the governor will have taken all your healthy law enforcement officers to enforce isolation and quarantine. Your local hospital will have run out of ventilators, and people will be trying to file lawsuits in your court claiming they have been denied access to medical care and vaccinations. Your municipal, magistrate and probate

courts will have all closed and transferred their cases up to you. Your clerk will remain at home with her sick children, and you and your remaining staff have no experience with gun licensing, marriage licensing, probating wills, nor do you have access to any of those courts' records. Within two months, instead of just 40 percent of your staff being out, you may know of deaths in your own community, the local grocery store may no longer be stocked, and people may be hoarding gasoline, food and over-the-counter prescription drugs.

Experts estimate that the swine flu pandemic will occur in three waves of 90 days each. In 1918, the Spanish flu – the first and most severe pandemic of the 20th century – killed an estimated 50 million people after the virus mutated. It was preceded by a surge of milder cases in the spring. But no one knows exactly what will happen with this new strain of virus come fall. It is nevertheless possible that court operations could be dramatically affected for an extended period. That's why courts must develop now a short-term and a long-term plan.

But you, unfortunately, have just been too busy. And you never really thought it would come to this. You begin to think: Good that I just got reelected because this could be a career ender. Had you started asking questions when the news first broke in March that there was a serious flu associated with pigs that was now spreading among people, or in June, when the WHO declared swine flu a global pandemic, you would not be in this situation.

You would have already read the document entitled, “**Emergency Preparedness in the State Courts**” available on the Georgia Courts website (www.georgiacourts.org). That would have convinced you to take action and led you to the “**Continuity of Court Operations Planning Guide**” or “**COOP**,” available on the same website. The guide walks you through how to create a plan tailored to your court. It tells you step by step how you can continue to perform the constitutionally and statutorily mandated functions of the court. For instance, anyone who's been arrested must have an initial appearance within a mandated time frame before a judge, and a flu pandemic can't stand in the way.

The first thing you would do is **appoint a committee and develop your plan**. The committee should be made up of people with good organizational skills, such as your clerk, court administrator and sheriff. They would begin to identify your court's essential functions – who performs them and what steps are taken to complete them. The person who pulls up the docket, for instance, needs a computer, Internet access, a user name and password. And if he or she is not there, who will have that information and be able to do it?

If you already have a COOP – and every court should as a part of its overall emergency preparedness – the next step is to **develop an appendix** that speaks to the unique aspects of a pandemic, which will differ from those of other emergencies. You can flesh out that appendix with the help of the fill-in-the-blank **“Pan Flu Appendix Template”** found on the website. With a pandemic, for instance, in addition to your own workforce being down 40 percent, you must anticipate that everyone who supports you could also be down 40 percent. What if your online research service is compromised due to a loss of its staff? Yet, you may now need to do substantial research on public health law.

In anticipation of a different breed of lawsuits, you also need to be armed with specific orders. For those, go to the **“Georgia Pandemic Influenza Bench Book”** on the Georgia Courts website. This reference book outlines all the statutes related to public health emergencies, including laws that deal with involuntary treatment, quarantine and isolation and property issues. And it has model orders, such as an order requiring someone to undergo medical treatment, or another for upholding a quarantine. You might decide to postpone certain civil cases, such as small claims, landlord-tenant, mergers and acquisitions, or suspend criminal traffic, drug and DUI cases, while keeping statutorily mandated functions open, such as initial appearances. Or, you may decide to hold your initial appearances via videoconferencing from the jail. If you need to totally close your court, the Bench Book contains model closure orders you can print out and sign. It also includes the name and title of the person who represents public health in your county. In a pandemic, this person could become your best friend, and if you haven’t already met him or her, now is the time.

Hopefully this is the worst case scenario, and as the sheriff said, the purpose is not to be an alarmist. Rather, it’s to prompt everyone connected to the court system to plan.

Postscript: Recently, that other dire warning cropped up in the news. The headline read: “Swine Flu: H1N1 Virus More Dangerous Than Suspected.” The CDC reports that to date, there have been 40,617 confirmed and probable cases of swine flu in the United States and 263 deaths in 55 states and territories.

