

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

Public Access to Judicial Proceedings During the Covid-19 Pandemic-Livestream Policy

On April 28, 2020 the Pennsylvania Supreme Court issued an order¹ directing that during the Covid-19 pandemic:

In proceedings as to which a right to public and press access would otherwise exist, provision must be made to ensure some reasonable means of access. For example, with respect to a proceeding conducted using audio-visual means, such public access may be effectuated during the proceeding by providing live-stream access, or by making a recording available as soon as possible after the proceeding has been concluded.

In accordance with the above direction, the First Judicial District of Pennsylvania adopts the below process to ensure that the public², will have reasonable means of access to judicial proceedings.

(1) Judicial Proceedings to Which the Right to Public Access Attaches.

Public access will be provided as set forth below to all proceedings which before the Covid-19 pandemic were open to the public. Those proceedings that were closed to the public before the Covid-19 pandemic will remain closed to the public regardless of whether they are conducted in-person or by using advanced communication technologies³.

(2) In-Person Proceedings Conducted at a Judicial Facility.

The public will be permitted to attend certain proceedings conducted in some judicial facilities when access to the judicial facility itself is authorized by federal, state and local authorities, and safeguards designed to insure the health and safety of court personnel, court users, and members of the public in light of the risks posed by the COVID-19 virus are in place.

The number of people who may be reasonably admitted to a judicial facility or specific courtroom may be limited due to the reduced occupancy necessary to insure safe- distancing consistent with CDC and other federal, state and local health guidelines.

As long as the public, albeit at a reasonably reduced number, is able to attend a judicial proceeding at a judicial facility, livestream or other remote access to that proceeding, as described below, will not be required even when the proceeding is conducted using advanced communication technologies.

(3) Access to Judicial Proceedings Conducted Using Advanced Communication Technologies or Proceedings Conducted In-Person where Health Safeguards, Necessitated by Covid-19 risks, Prevent the Public to Attend. The public shall be provided access, as provided below, to judicial proceedings which are fully conducted utilizing advanced communication technologies, as well as in-person proceedings that are conducted in a facility where COVID-19 restrictions on occupancy do not allow for attendance by the public.

¹ See Supreme Court Order captioned *Emergency Order of Statewide Judicial Administration*, at Nos. 531 and 532 Judicial Administration Docket. Article I, Section 11 of the Pennsylvania Constitution mandates that "All courts shall be open..."

² The term "public" in connection with this protocol includes the press and the media in general.

³ Generally, the public has access to all "judicial proceedings" unless certain case-types or proceedings are statutorily closed to the public such as certain proceedings involving juveniles (see 42 Pa.C.S. § 6336) and incapacity proceedings. See 20 Pa. C.S. § 5511(a). Judges may also close certain hearings or proceedings as allowed by legal authority.

(4) Access to Judicial Proceedings to the Parties and to the Public.

In-person attendance of judicial proceedings is available in certain facilities and case types.

Zoom is the primary advanced communication technology used by the First Judicial District to conduct remote proceedings although other advanced communication technologies are utilized in some facilities or in connection with certain proceedings. Only the participants to the proceedings will be sent a digital invite or will be able to participate remotely utilizing advanced communication technologies pursuant to protocols established from time to time.

The public will be provided access to judicial proceedings as follows:

(a) Criminal Trials and other Criminal Judicial Proceedings.

(i) Court of Common Pleas Judicial Proceedings.

(1) Jury Trials. Due to current social distancing restrictions, the public will not be permitted to attend in-person jury trials in the courtroom in which they will be held. Rather, the public will be provided in-person access to the Justice Stout Center for Criminal Justice and will be provided livestream access to jury trials in alternate courtrooms or court facilities. The number of people permitted in any courtroom or court facility will depend on space available after necessary modifications are made designed to insure the health and safety of court personnel, court users, and members of the public which comply with social distancing requirements and guidance provided by the CDC and federal, state and local authorities.

(2) Non-Jury Trials and other Judicial Proceedings. The public will be permitted to attend the judicial proceedings in-person, in the courtroom in which the non-jury trials or other judicial proceedings are held. The number of people permitted in any courtroom or court facility will depend on space available after necessary modifications are made designed to insure the health and safety of court personnel, court users, and members of the public which comply with social distancing requirements and guidance provided by the Centers for Disease Control and other federal, state and local authorities.

ii. Philadelphia Municipal Court. Non-Jury Trials and other Judicial Proceedings.

The public will be permitted to attend the judicial proceedings in-person, in the courtroom in which the non-jury trials or other judicial proceedings are held. The number of people permitted in any courtroom or court facility will depend on space available after necessary modifications are made designed to insure the health and safety of court personnel, court users, and members of the public which comply with social distancing requirements and guidance provided by the Centers for Disease Control and other federal, state and local authorities.

iii. Philadelphia Municipal Court Traffic Division.

The public will be permitted to attend the judicial proceedings in-person, in the courtroom in which the judicial proceedings are held. The number of people permitted in any courtroom or court facility will depend on space available after necessary modifications are made designed to insure the health and safety of court personnel, court users, and members of the public which comply with social distancing requirements and guidance provided by the Centers for Disease Control and other federal, state and local authorities.

(b) Civil Trials and Other Civil Proceedings.

(i) Court of Common Pleas: Trial Division - Civil and Orphans' Court Division.

Until in-person access is available, the public will be able to access judicial proceedings remotely, on dedicated court YouTube channels. Public access may include video, audio or both. The links to the judicial proceedings will be posted by the First Judicial District at: www.courts.phila.gov/livestreams. The judicial proceedings will be streamed live and will not be available for viewing after the livestream concludes.

(ii) Philadelphia Municipal Court-Civil Division.

Until in-person access is available, the public may access judicial proceedings by requesting to listen to a recording of those proceedings. Recordings shall be made available to the public for listening upon request as soon as possible after the proceeding has concluded. By calling 215-686-2910, the public may initiate a request to schedule a time for listening to a court proceeding at a reasonable time and location designated by the court. An official transcript shall continue to constitute the only official record of a court proceeding.

(5) Judicial Proceedings cannot be recorded, transmitted or broadcast.

Reasonable efforts, verbally or in writing, shall be made to remind the public that judicial proceedings cannot be recorded, transmitted or broadcast and of the consequences for doing so, essentially as follows:

It is unlawful and a criminal offense to record, transmit or broadcast video, audio or photograph of any judicial proceeding and violators may be found to be in contempt of court and may be criminally charged with a misdemeanor punishable by imprisonment of up to two years for a first offense. See Pa.R.J.A. 1910, Pa.R.Crim.P. 112 and 18 Pa.C.S. § 5103.1.

(6) Protective Measures.

When specific legally sufficient facts, supported by current case law on excluding or limiting the public from an open courtroom, are presented to enable the Court to conclude a witness may be subject to being intimidated or otherwise threatened should the testimony, identity or images of the witness be disclosed, the Court may take reasonable steps to safeguard the identity and privacy of the witness by limiting public access via livestream by:

- (a)** affording the victim or witness an opportunity to proceed via a pseudonym in any technology-assisted hearing, and upon such election direct by court order all parties and witnesses to refer to the victim or witness via the pseudonym;
- (b)** interrupting the video stream and temporarily permitting only audio streaming;
- (c)** temporarily interrupting the livestream during the testimony of a witness; or
- (d)** taking other appropriate measures designed to safeguard the privacy, identity and safety of the witness.

This provision does not limit the Court's ability to exclude or limit the public from judicial proceedings for other reasons as established under applicable case law when necessary.

- (7) Proceedings Not Subject to this Policy.** Judicial proceedings conducted utilizing the Ring Central platform will be made available to the public as specifically provided in a separate protocol or policy.
- (8) Effective Date.** Judicial proceedings scheduled on or after September 8, 2020 shall be accessible by the public as provided in this Policy. Judicial proceedings scheduled before September 8, 2020 shall be accessible to the public consistent with the protocol in effect when scheduled.