

IN THE SUPREME COURT OF PENNSYLVANIA

Docket No. 21 EM 2020

***In Re: Court of Common Pleas of The First Judicial District of Pennsylvania's Request Pursuant to Pa.R.J.A. 1952(B)(2)(m) to Temporarily Suspend or Modify Statewide Court Rules Regarding Utilization of Advanced Communication Technology***

AND NOW, this 30<sup>th</sup> day of November, 2021, Idee C. Fox, President Judge and Chair of the Administrative Governing Board of the First Judicial District of Pennsylvania, hereby requests the temporary suspension or modification of statewide rules, by Order of the Supreme Court pursuant to Pa.R.J.A. 1952(B)(2)(m) as follows:

1. Request for Order authorizing the continued temporary suspension of:
  - a. Any state and local procedural rules, which restrict, directly or indirectly, the use of advanced communication technology ("ACT") to January 7, 2021, to allow continued use of ACT. All judges and staff will continue to preside in the courtroom and/or court facilities.
  
2. The circumstances necessitating this Request include the following:
  - a. The late summer surge in COVID-19 cases never dissipated. According to the Philadelphia Department of Public Health, as of November 29 2021, the 7-day case average is approximately 253 new cases of COVID-19 per day over the last two weeks. On November 29, 2021, the Philadelphia Department of Health issued a press release stating that it has been monitoring the new Omicron variant, which is possibly more contagious and more likely to cause reinfections than previous strains. The First Judicial District's number of positive cases among employees has not reached zero, despite the continuation of mandatory mask wearing regardless of vaccination status at all court

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facilities. The First Judicial District has also implemented a vaccine mandate for all employees that required all non-exempt employees to be fully vaccinated by November 15, 2021. As the number of vaccinated individuals have increased in Philadelphia and the FJD, the average number of cases has not decreased in kind.

- b. Due in part to the pandemic-induced delays, the Philadelphia Department of Prisons is experiencing conditions, which have now been exacerbated by increasing COVID-19 cases and the accompanying need to quarantine prisoners who have tested positive or are suspected positive cases. Currently, approximately 1,213 of the Department's prisoner population are quarantined pursuant to the prison's medical protocols. This number represents an increase of more than 300% since August 20, 2021. All quarantined inmates are unavailable for court.
- c. In-person court proceedings for any COVID-19 positive or quarantined defendant cannot be held and must be continued, placing further strain on the court's efficiency and necessitating the use of ACT for timely hearings. By way of example, in October 2021, approximately 973 of the approximately 4,700 incarcerated defendants were in medical quarantine and could not be transported. Due to the use of ACT, the Criminal Trial Division was still able to effectuate the disposition of 992 cases.
- d. The use of ACT allows the First Judicial District to continue to process matters safely, fairly, and expeditiously, especially for Defendants incarcerated in Philadelphia and out-of-county facilities. The Department of Corrections has not yet resumed transportation of inmates pursuant to ACT 82, which enables the transportation of inmates from state correctional institutions to Philadelphia. In addition, transportation of inmates in other counties has not yet returned to pre-pandemic levels. The use of ACT will enable the resolution of matters in which Defendant is incarcerated and cannot

be transported, avoid delay in the resolution of all matters, and allow time for the court to effectively and efficiently continue the expansion of operations in conjunction with all criminal justice partners.

- e. The use of ACT has enabled the Court to a steadily increase disposition rates despite continued social distancing mandates. Without the continued use of ACT, disposition rates will be negatively impacted.
- f. During the pandemic, the First Judicial District remained operational and has continued to expand operations. The 31 Judges assigned to the Trial Division-Criminal Section are all working from the courthouse daily, assigned to one of four programs: Homicide, Major Felony, Felony Waiver, or SMART/Specialty programs. Between March 1, 2021, and October 31, 2021, there have been approximately 5,206 dispositions made by criminal judges, an average of 651 per month.
- g. In June 2021, in an effort to expedite custody cases, the First Judicial District developed the Case Accelerated Resolution Program (“CARP”); a pilot program designed to accelerate the resolution of cases awaiting trial in the Major Felony Program. All judges assigned to the Major Felony Program were reassigned to jury and non-jury categories. All custody cases listed in the Major Felony Program were then listed for status conferences to determine whether the matter could proceed as a jury or non-jury trial. The use of ACT enabled the court to conduct 900 status conferences (and many of the resulting guilty pleas) in a 3-week period. As a result, the number of custody cases awaiting jury trial in the Majors Felony Program continues to be reduced. As an example, the number of custody cases awaiting trial was reduced from 886 to 456 between June 1, 2021 and July 14, 2021, a reduction of 49%.
- h. The CARP program is expanding to include bail matters listed for trial in the Major Felony Program. Each bail matter still awaiting a trial

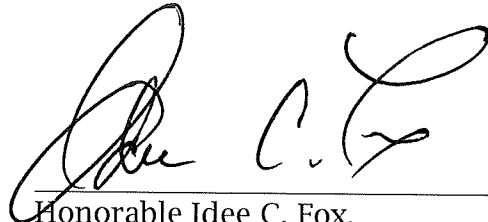
date (approximately 1350 cases) has been scheduled for a status conference between September 27, 2021 through December 20, 2021. Like the earlier iteration of the program, the continued use of ACT is essential to the success of this phase.

- i. The First Judicial District also conducted case conferencing hearings between July 26, 2021 and August 6, 2021 of approximately 270 custody cases awaiting trial in the Felony Waiver Program, 24% of the total cases in the program. These case conferencing hearings continue because the use of ACT permits defendants in local and out-of-county facilities to efficiently and expeditiously enter guilty pleas to resolve open matters. Given the success of this program, the First Judicial District has been asked to consider continuing this program in January 2022 once the second phase of the CARP program is complete.
- j. In addition, since September 2020 in midst of the pandemic, and despite the suspension of jury trials from November through February the First Judicial District has selected jury panels in 101 criminal trials. Due to the small courtroom size, it is necessary to use three courtrooms per jury trial to provide participants the means to safely social distance. One courtroom is used to conduct the trial, with some jurors in the gallery. A second courtroom is used for socially distanced juror deliberations. A third courtroom is set aside for public-access viewing via live stream. Further, due to social distancing, jury selection is limited to one criminal jury per day. In light of the constraints of the above safety procedures, the First Judicial District can safely conduct only four jury trials per week. In order for our system to work, we are dependent on the public response to the call to serve. We have been successful in our jury operation because we have established safe and reasonable protocols for our jurors and the conduct of trial.

- k. The continued use of ACT in Gagnon I and Gagnon II hearings, Guilty Plea Hearings, Sentencing Hearings, Post Conviction Relief Act hearings, Post Sentence Motion Hearings, Bench Warrant Hearings, Bail Hearings, Extradition Hearings, and Arraignments is necessary during this COVID-19 surge in Philadelphia County. The availability of ACT as an alternative to conducting in-person proceedings in the above matters allows the First Judicial District to limit the number of people in the courtroom to prevent the spread of COVID-19, and increase the availability of lawyers to handle multiple matters across multiple courtrooms both in Philadelphia and other counties. All judges and staff will continue to preside in the courtroom and court facilities.
  - l. The use of ACT has been favorably received by our justice partners in that it has proven efficient and effective in allowing the courts of the First Judicial District to move criminal matters through the system. The continued use of ACT will allow for further prompt resolution of cases.
  - m. The continued temporary use of ACT is a tool that should remain available as necessary for the First Judicial District given the uncertainties of the duration and severity of the COVID-19 pandemic.
3. All of the judges assigned to the criminal division are in the courthouse and in their courtroom whether conducting live or remote hearings. The use of ACT has allowed judges to handle a more diverse and increased list.
4. All of these foregoing factors necessitate the continued utilization of the above measures, which have enabled the First Judicial District to conduct and resume judicial proceedings consistent with the Supreme Court orders issued from time to time at Nos. 531 and 532 Judicial Administration Docket, including Orders issued on April 28, 2021, May 27, 2021, June 21, 2021, July 2, 2021, October 1, 2021, and October 29, 2021. All ACT proceedings will be originated and operated from the Courtroom, with Judge and staff present.

5. Notice of this request for the temporary suspension or modification of statewide rules has been or will be:
- a. Posted on the court's website;
  - b. Distributed to the Philadelphia Bar Association for further distribution;
  - c. Submitted to the Administrative Office of Pennsylvania Courts for publication pursuant to Rule of Judicial Administration No. 1952(C)(5); and
  - d. Published in *The Legal Intelligencer*, the legal publication designated by the court for publication of legal notices.
6. Interested parties are advised that objections to any emergency judicial order issued by the Supreme Court should be transmitted to the Supreme Court Prothonotary.

Date: 11/30/2021

  
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Honorable Idee C. Fox,  
President Judge, Court of Common Pleas