

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 Amended Request Pursuant to Pa.R.J.A. 1952(B)(2)(m) to Temporarily Suspend or Modify Statewide Court Rules Regarding Prompt Trials and Utilization of Advanced Communication Technology***

AND NOW, this 20<sup>th</sup> day of August, 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. Pennsylvania Rule of Criminal Procedure No. 600 to October 31, 2021, so that the time period between March 17, 2020 and October 31, 2021 shall be excluded from time calculations, and shall not be attributed to the Commonwealth or the Defendant.
  - b. Any state and local procedural rules, which restrict, directly or indirectly, the use of advanced communication technology ("ACT") to October 31, 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. Due to the recent surge in COVID-19 cases, the 7-day case average has risen from 47 new cases per day on July 2, 2021 to a 7-day average of 281 new cases per day as of August 19, 2021, a 600% increase in just over a month. The CDC has classified Philadelphia County as a "high" transmission zone. According to the Pennsylvania Department of

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Health, Philadelphia County has the second lowest vaccination rate per 100,000 residents of any County in the Commonwealth. In the past month, Philadelphia County has reinstated the indoor mask mandate. The First Judicial District implemented the same policy, mandating mask wearing regardless of vaccination status at all court facilities. Court leadership receives daily and weekly updates on the number of employees who test positive for COVID-19. Although there were weeks of zero, there has recently been a clear uptick in the number of employee cases. There is no indication that the present rate of increase in cases will abate in the near term.

- b. Due in part to the pandemic-induced delays, the Philadelphia Department of Prison is experiencing overcrowding 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 385 of the department's prisoner population are quarantined as positive or suspected COVID-19 cases. All quarantined inmates are unavailable for court.
- c. In-person court proceedings for any COVID-19 positive or suspected positive defendant cannot be held and must be continued, placing further strain on the court's efficiency.
- 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. During the pandemic, the First Judicial District remained operational and has continued to expand operations. The 32 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. Since March 1, 2021, there have been approximately 2,245 dispositions made by criminal judges, an average of 449 per month.
- f. In an effort to expedite custody cases, the First Judicial District developed the Custody Accelerated Resolution Program; (“CARP”) a pilot program designed to accelerate the resolution of custody 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 approximately 900 status conferences (and many of the resulting guilty pleas) in a 3-week period. As a result, the number of cases awaiting jury trial in the Majors Felony Program was reduced from 886 to 456 between June 1, 2021 and July 14, 2021, a reduction of 49%. The use of ACT is necessary to continue this successful program.
- g. The First Judicial District also conducted case conferencing hearings of approximately 270 custody cases awaiting trial in the Felony Waiver Program. The case conferencing hearings resulted in the resolution of 24% of the total custody cases in the program. The use of ACT permitted defendants in local and out-of-county facilities to efficiently and expeditiously enter guilty pleas to resolve open matters.

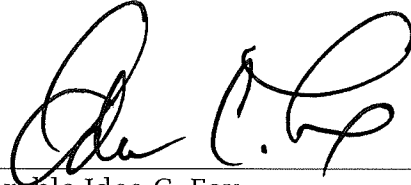
- h. In addition, the First Judicial District has resumed criminal jury trials and has selected a total of 64 juries during the pandemic. Due to the small courtroom size, it is necessary to use three courtrooms per each jury trial to provide participants the means to safely social distance. One courtroom 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 criminal jury trials per week. While the First Judicial District had planned to increase the number of criminal jury trials to eight per week by decreasing the amount of social distancing in the courtrooms, given the recent uptick in cases, this process must be postponed.
- i. 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.
- j. As set forth above, the ability to suspend the operation of Pa.R.Crim.P. 600, as permitted by the Supreme Court during the period of the declared judicial emergency, has allowed the FJD to manage criminal matters in such a manner that both maximized the safety of all participants and moved cases toward resolution as quickly as practicable.

- k. 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. The Defender Association of Philadelphia objected to the First Judicial District's previous petition related to the continued use of ACT by attaching policies that apply to only one of the four programs in the Criminal Trial Division. As the Defender Association well knows, ACT is routinely used in all programs in the Criminal Trial Division as described above.
  - l. The continued temporary suspension of Rule 600 and the continued temporary use of ACT are tools 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 which necessitate the continued utilization of the above measures, which have enabled to 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, 2020 and July 2, 2021. All ACT proceedings will be originated and operated from the Courtroom, with Judge and staff present.
4. 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.
5. 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:

8/20/2021



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Honorable Idee C. Fox,  
President Judge, Court of Common Pleas  
Chair, Administrative Governing Board of the  
First Judicial District of Pennsylvania