

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 29th day of March, 2022, Idee C. Fox, President Judge Court of Common Pleas, 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 June 3, 2022, 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 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 the COVID-19 pandemic 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.

- b. While the number of positive cases has decreased in the past month, as of March 21, 2022, an average of new cases of COVID-19 per day were reported over the last two weeks was 59. That number does not include results from take home tests. As of March 7, 2022, the City of Philadelphia and Philadelphia Department of Health lifted the mask mandate for City Buildings for vaccinated employees and visitors. Despite the continuation of mandatory mask wearing regardless of vaccination status at all court facilities and the implementation of a vaccine mandate for employees the First Judicial District's number of positive cases has not reached zero. The Department of Health has advised that certain settings, such as public transit and healthcare facilities are higher risk. Masks are still required in courtrooms. The use of ACT for 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 prevents the congregation of large numbers of people which would result in a higher risk setting without having a negative impact on processing rates. In fact, as of March 22, 2022, the Criminal Trial Division is at pre-pandemic processing rates, and, in many types of cases, is processing them more quickly and more efficiently than pre-pandemic. For example, the wait time for a nonjury trial is significantly less than it was before the pandemic, and the wait time for a jury trial is the same as pre-pandemic. The Criminal Trail Division has accomplished these rates while maintaining the safety of litigants. There have been zero known Covid-19 transmissions during criminal proceedings.
- c. Due in part to the pandemic-induced delays, the Philadelphia Department of Prisons continues to experience the need to quarantine

prisoners who have tested positive or are suspected positive cases. All quarantined inmates are unavailable for court.

- d. 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.
- e. 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 only recently 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 Criminal Trail Division requires that all incarcerated Defendant and incarcerated witnesses be tested for COVID-19 prior to being transported to the Stout Center for Criminal Justice. As a result, if an incarcerated person refuses the COVID-19 test, he or she will not be transported to the Stout Center. In cases involving Co-Defendants and material witnesses, such delays not caused by the principal Defendant are extremely problematic. The use of ACT will enable the resolution of matters in which Defendants, Co-Defendant and/or material witnesses are incarcerated 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.
- f. 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. The number of dispositions increased from 240 in January of 2021 to 992 in February of 2022

- g. 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 February 28, 2022, there have been approximately 8,469 dispositions made by criminal judges, an average of 705 per month.
- h. 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 Major Felony Program was reduced from 886 to 456 between June 1, 2021 and July 14, 2021, a reduction of 49%.
- i. The CARP program was expanding to include bail matters listed for trial in the Major Felony Program. Each bail matter awaiting a trial date (approximately 1,350 cases) was scheduled for a status conference between September 27, 2021 through December 20, 2021. Those cases are now being tried. Like the earlier iteration of the program, the continued use of ACT was essential to the success of this phase.
- j. 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. The use of ACT permits defendants in

local and out-of-county facilities to efficiently and expeditiously enter guilty pleas to resolve open matters.

- k. In addition, since September 2020 in midst of the pandemic, and despite the suspension of jury trials from November 2020 through February 2021 the First Judicial District has selected jury panels in 136 criminal trials. As of March 14, 2022, the Criminal Trial Division doubled the number of jury trials from four to eight per week. Due to the small courtroom size, it is necessary to use two 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 set aside for public-access viewing via live stream. Further, due to social distancing, jury selection is limited to two criminal jury per day. In light of the constraints of the above safety procedures, the First Judicial District can safely conduct only eight jury trials per week. For our system to work, we are dependent on the public response to the call to serve as jurors. We have been successful in the expansion of our jury operation because we have established safe and reasonable protocols for our jurors and the conduct of trial.

- l. 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 the continued threat of a 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.

- m. 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.
 - n. 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, October 29, 2021, December 2, 2021, January 7, 2022, and February 14, 2022. 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.

- 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: 3/29/22 _____

/s/ IDEE C. FOX

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