

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 27<sup>th</sup> day of May, 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. The state and local procedural rules noted below, which restrict, directly or indirectly, the use of advanced communication technology ("ACT") to September 6, 2022, to allow continued use of ACT. All judges and staff continue to preside in the courtroom and/or court facilities.
  - b. Specifically, the Philadelphia Court of Common Pleas requests a suspension of the prohibition against using ACT 119 (A) (2), (3), (4), (5), (6), (7) and Rule 908 to permit the presiding judge with the discretion to use ACT to conduct status conference in juvenile transfer proceedings; bench trials; sentencing hearings; in-courthouse jury selection; post-conviction collateral proceedings;

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and parole, probation, and intermediate punishment revocation hearings.<sup>1</sup>

2. The circumstances necessitating this Request include the following:

- a. The Philadelphia Sheriff's Office requires that all incarcerated defendants and 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, they will not be transported to the Stout Center. The Sheriff of Philadelphia is an independently elected official. The working conditions of the employees in the Sheriff's Office is governed by a collective bargaining agreement.
- b. As a result of the Philadelphia Sheriff's Office testing policy, 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.
- c. Hostile and recalcitrant incarcerated witnesses are routinely transported to the Stout Center in a significant number of Homicide cases. If those witnesses learn that they can avoid being transported by refusing to submit to a Covid-19 test, a pandora's box will be opened. Philadelphia currently has an inventory of more than 670 homicide matters awaiting trial.

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<sup>1</sup> On June 30, 2021, The Remote Proceedings Task Force created by the Administrative Office of Pennsylvania Courts in conjunction with the Pennsylvania Conference of State Trial Judges issued its final report and recommendations concerning best practices involving ACT. The instant request for suspension is in line with the recommendations of the final report.

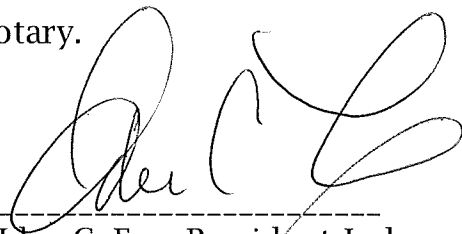
- d. In the overwhelming majority of these cases (greater than 99%), the Criminal Trial Division obtains the consent of the defendant before proceeding via ACT. The suspension of the rules is necessary, however, where a jury trial participant is uncooperative and attempts to unreasonably delay proceedings.
- e. The use of ACT enables the resolution of matters in which defendants, co-defendant and/or material witnesses are incarcerated. The use of ACT prevents delay in the resolution of all matters and affords time to continue the operations effectively and efficiently in conjunction with all criminal justice partners.
- f. Philadelphia is in the midst of an epidemic of gun violence and an unprecedented increase in violent crime, including but not limited to, homicides. This crime wave has contributed to prison overcrowding and increased case inventories. As a result, the Criminal Trial Division has emerged from the pandemic to a set of unique and evolving circumstances. The use of ACT has dramatically improved the efficiency of case processing and dispositions in the Criminal Trial Division. It is critical that this tool remain available to ensure access to justice for criminal defendants and victims.
- g. 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 (approximately four to five months) than it was before the pandemic (approximately six to nine months), and the wait time for a jury trial is the same as pre-pandemic (approximately one year).

- h. The use of ACT has enabled the Court to a significantly increase disposition rates above the pre-pandemic rates. For example, in 2019 the average number of dispositions per year, per judge was 235. For the period of April 1, 2021 to March 31, 2022 the average number of dispositions per year, per judge was 338. In short, with the use of ACT, the Criminal Trial Division increased the number of dispositions by 31% over pre-pandemic rates. Without the continued use of ACT, disposition rates will be negatively impacted.
  - i. In addition, since September 2020, in the midst of the pandemic, and despite the suspension of jury trials from November 2020 through February 2021, the First Judicial District selected jury panels in 181 criminal trials. Without the use of ACT, jury selection will be slowed and proceedings will be elongated.
  - j. 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. Specially, the District Attorney's Office supports the continued use of ACT in the proceedings described above, and the Defenders Association of Philadelphia does not oppose. The continued use of ACT will allow for further prompt resolution of cases.
3. All of the 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, 2022, July 2, 2021, October 1, 2021, October 29, 2021, December 2, 2021, January 7, 2022, February 14, 2022, April 6, 2022, and May 17, 2022. All ACT proceedings originate and operate from the courthouse, 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: 5/27/2022

  
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Idee C. Fox, President Judge  
Court of Common Pleas,  
First Judicial District