

IN THE SUPREME COURT OF PENNSYLVANIA

In Re: 43rd Judicial District : 38 MM 2020
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: : Petition for Emergency Judicial Order
: : Pursuant to Pa.R.J.A. No. 1952(B)(2)

Petition for Continuation of Emergency Judicial Order Pursuant to Pa.R.J.A. No. 1952(B)(2)

TO THE JUSTICES OF THE PENNSYLVANIA SUPREME COURT:

Margherita Patti-Worthington, President Judge of the 43rd Judicial District, hereby files the following Petition for Emergency Judicial Order Pursuant to Pa.R.J.A. No. 1952(B)(2) and in support thereof, avers as follows:

1. On March 16, 2020, we declared a judicial emergency in response to the COVID-19 Pandemic.
2. By subsequent orders, we extended the judicial emergency through June 30, 2021.
3. On June 21, 2021, the Pennsylvania Supreme Court entered an order stating “[e]ffective July 6, 2021, operation of the Unified Judicial System shall return to pre-pandemic status. All courtrooms, adjacent judicial facilities, chambers, and offices within the Unified Judicial System shall be fully opened and staffed by judges and other personnel.”
4. On June 24, 2021, in response to the Pennsylvania Supreme Court’s June 21st Order, we filed a “Petition for Emergency Judicial Order Pursuant to Pa.R.J.A. No. 1952(B)(2),” which was granted, in part, by Order of the Supreme Court dated June 29, 2021.
5. The Supreme Court’s June 29th Order allowed this Court to “continue to suspend any state or local rule that restricts the use of advanced communication

technology (ACT) in court proceedings,” with certain qualifications, which this Court has followed.

6. On August 19, 2021, this Court filed a second petition, seeking to extend the suspension of rules that restrict the use of ACT, citing specific statistics regarding the rising number of COVID-19 cases in this County and Pennsylvania, as well as the below average vaccination rates and high transmission rates in the Forty-Third Judicial District.

7. This Court’s August 19th Petition was denied without prejudice for failure to “sufficiently detail how the Forty-Third Judicial District is presently experiencing a county-specific judicial emergency justifying the requested relief under Rule of Judicial Administration 1952(B)(2).”

8. On August 31, 2021, this Court filed a third petition seeking to extend the suspension of rules that restrict the use of ACT, citing specific statistics regarding the rising number of COVID-19 cases in this County and Pennsylvania, as well as the below average vaccination rates and high transmission rates in the Forty-Third Judicial District.

9. On September 3, 2021, this Court’s August 31st Petition was GRANTED IN PART and authorized the President Judge, through October 1, 2021, to suspend state or local rules that restrict the use of ACT in court proceedings, subject to state and federal constitutional limitations. Judges shall be present in the courthouse, judicial center, or other court facility whenever a proceeding is being conducted by ACT, except for extraordinary circumstances, such as when court properties have been closed due to inclement weather or other emergency under Pa.R.J.A. No. 1950-1954, or when a proceeding is not being conducted during normal business hours. In all other respects, the Application was Denied.

10. For the following reasons, we again request that the Pennsylvania

Supreme Court grant permission for this Court to continue to suspend any state or local rule that restricts the use of advanced communication technology (ACT) in court proceedings, through December 31, 2021 as a proactive, preventative and necessary measure and in support thereof avers:

- a. The full vaccination rate in the 43rd Judicial District is currently under the average for all of Pennsylvania and our daily case count continues to rise. Monroe County has seen a recent surge in COVID-19 cases: the 7-day average on July 6, 2021 was 2 while the 7-day average as of August 6, 2021 was 24, representing an 1100% increase in just one month. Moreover, the 7-day average continued to rise to 39 on August 29, 2021 and as of September 26, 2021 the 7-day average was 66, representing a 69% increase over the rate cited in Our last petition or a 3200% increase in just under three months.
- b. Our local medical experts have opined that the statistics are artificially low due to lower than average testing rates in the community.
- c. Despite the potential for artificially low numbers, Monroe County is classified as a “high” transmission zone, with a current incidence rate of 271.9 per 100,000 residents—significantly above the statewide incidence rate of 196.3 for Pennsylvania, and higher than larger jurisdictions including Philadelphia, Allegheny, Montgomery, Bucks and Delaware Counties.
- d. The statewide statistics are likewise increasingly troublesome. In this Court’s August 19th Petition, we cited a 7-day average for all of Pennsylvania of 2,098 new COVID-19 cases. During the week of

our last petition, the 7-day average was 3,255 (55% increase in less than two weeks). Current statistics indicate that the 7-day average has increased to 4,525 or in other terms, 39% higher than the August 31st Petition and a 116% increase since the August 19th Petition.

- e. The Delta Variant of COVID-19, in conjunction with continued low vaccination rates and increasing breakthrough infections, has proven particularly contagious and poses significant health, safety, and welfare issues. A recent uptick in COVID-19 cases and exposures among court and court-related employees and staff, despite requiring masking and social distancing (as possible) inside all Court Facilities, has required quarantining of staff and judicial officers.
- f. Notwithstanding, all courts in the 43rd Judicial District have been and have remained open since our declaration of judicial emergency with health and safety measures in place that have enabled us to avoid any *major* outbreaks of COVID-19 among court and court-related employees and staff.
- g. We have been able to remain consistently open and operational by using both ACT and in-person proceedings at our Magisterial District Justice offices and the Court of Common Pleas. ACT has been vital in our ability to remain open.
- h. The continued use of ACT in Preliminary Hearings, Preliminary and Formal Arraignments, Pretrial Conferences, Guilty Plea Hearings, Bench Warrant Hearings, Sentencing Hearings, Post Sentence Motions Hearings, Bail Hearings, and PCRA Hearings is necessary

during this COVID-19 surge in Monroe County. The availability of ACT as an alternative to conducting in-person proceedings in the above matters allows this Court to limit the number of people in the Courthouse, overall, and the courtrooms, individually, to prevent the spread of COVID-19, and increase the availability of lawyers to handle multiple matters across multiple courtrooms or counties. ACT also allows this Court to continue conducting these types of proceedings with individuals incarcerated at state correctional facilities, to further cut down on transportation-related exposure. All judges and staff have been and will continue to preside in the courtroom and Court Facilities.

- i. Since March 12, 2020, we have had 8,212 criminal dispositions, including 22 jury trials and 21 bench trials. We have been working consistently over the last several months to reduce the backlog of cases that resulted from the initial state-wide shut down of Court Facilities. We have been able to maintain these numbers, despite space limitations, through the use of ACT. In our Courthouse, we are limited, based on safe social distancing standards, to selecting only one jury at a time in our largest courtroom, as opposed to multiple juries in multiple courtrooms. Additionally, throughout the course of a jury trial, we must internally simulcast the proceedings to another location in order to maintain proper public access. Furthermore, we have been conducting all bench trials via ACT in an effort to free Courtroom space for jury trials to keep cases moving through the system in a fair and efficient manner.
- j. Nearly every Custody petition filed in this Court requires either a

hearing or a conciliation conference. In August, we had approximately 40 Custody petitions filed. These hearings and conciliations are conducted utilizing ACT. Without the use of ACT, we would be entirely unable to process our current Custody caseload. As explained above, Court Facility space that can be effectively used with proper social distancing is at a premium and must be used for jury trials where possible. By being able to conduct Custody hearings and conciliations via ACT, we do not have to divert precious Court Facility space, we can protect the litigants, including children who are not yet eligible for vaccination, and Court officers involved, and we can keep up with the ever increasing Custody filings without compromising on space, safety, or efficiency.

- 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 Forty-Third Judicial District to move matters through the system. The continued use of ACT will allow for further prompt resolution of cases.
- l. As mentioned in the August 31st Petition, the vaccination rate of our local jail population (31%) is well below the statewide average and ACT has proven to increase the safety of prisoners while providing a cost-effective alternative to the often-unnecessary transport of prisoners to and from in-person proceedings.
- m. Since this time, the local jail has endured a number of recent outbreaks with the current “Active/Confirmed” cases now totaling 5% of the jail’s inmate population. “Active/Confirmed” case counts

at the jail have remained in the double digits since September 17, 2021; prior to this outbreak, the jail had avoided double digit case counts since December 25, 2020.

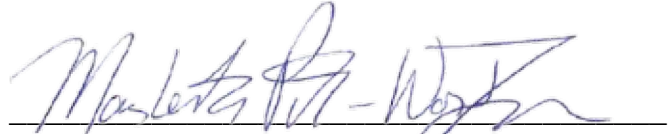
- n. 85% or more of preliminary hearings are waived and the Magisterial District Justice offices of this Judicial District do not provide enough space to effectively implement social distancing precautions. ACT proceedings in this Judicial District have and continue to be invaluable to the health, safety, and welfare of all involved while maintaining the ability to move cases through the judicial process.
- o. For example, with the use of ACT proceedings for incarcerated individuals, we have been able to avoid transporting these individuals to MDJ Offices by police vehicles, which are small and confined and offer no ability for social distancing, and then back to the jail, where there is limited space to effectively quarantine. If this Judicial District were forced to abandon our pandemic-related ACT practices, these types of exposures could easily spark a widespread infection at the jail.
- p. This Court seeks permission to continue using ACT in the manner we have been since the beginning of this pandemic pursuant to the definition of “emergency” as “an event or events that . . . poses a threat to the health and safety of court personnel, court users or the public,” Pa. R.J.A. No. 1950, in order to prevent a major outbreak of COVID-19 at the jail or in any judicial facility, and to continue processing matters safely, fairly, and expeditiously.

WHEREFORE, it is respectfully requested that in consideration of efficiencies in reducing backlog, cost effectiveness, and the health, safety, and welfare of the public,

court and county employees, and the judges and staff of the 43rd Judicial District, this Court provide the following relief:

1. Authorize the President Judge of the 43rd Judicial District to continue to suspend any state or local rule that restricts, directly or indirectly, the use of ACT in court proceedings until December 31, 2021, with the exception of Rule of Criminal Procedure 600, to allow the continued use of ACT where at all possible and practicable for any and all proceedings within this Judicial District.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Margherita Patti-Worthington", is written over a horizontal line.

Margherita Patti-Worthington, President Judge
43rd Judicial District
Monroe County, Pennsylvania