

REMOTE PROCEEDINGS TASK FORCE

Continued Use of Advanced Communication Technology (ACT)
Following the Termination of Judicial Emergencies

Administrative Office of Pennsylvania Courts/Pennsylvania Conference of State Trial Judges

FINAL REPORT JUNE 2021

INTRODUCTION

During the statewide judicial emergency when all Pennsylvania courts were generally closed to the public, and pursuant to specific authorization and encouragement by the Supreme Court of Pennsylvania, judges throughout the Commonwealth utilized advanced communication technology (“ACT”) to conduct court proceedings. See In re General Statewide Judicial Emergency, 230 A.3d 1015, 1016-17 (Pa. 2020); In re General Statewide Judicial Emergency, 229 A.3d 229, 230-231 (Pa. 2020); In re General Statewide Judicial Emergency, 228 A.3d 1283, 1285-86 (Pa. 2020). Although the general, statewide judicial emergency ceased as of June 1, 2020, President Judges in each judicial district were granted the power to declare local judicial emergencies under Pa.R.J.A. 1952(B)(2), which included the ability to temporarily “[s]uspend statewide rules that restrict, directly or indirectly, the use of advanced communication technologies,” subject to state and federal constitutional requirements. In re General Statewide Judicial Emergency, 234 A.3d 408, 409 (Pa. 2020).

In those judicial districts where local judicial emergencies remained in place after June 1, 2020, judges continued to use ACT to conduct many proceedings that traditionally are conducted in person. The use of ACT has eliminated court-related travel expenses for parties, lawyers, expert and lay witnesses, and members of the public, reduced lost time from work and child care costs for those same individuals to attend court proceedings, and spared counties the costs associated with the transportation of prisoners. It has also enhanced access to justice across the Commonwealth.

On June 21, 2021, the Supreme Court terminated the authority of president judges to declare local judicial emergencies, and ordered that effective July 6, 2021, “the operation of the Unified Judicial System shall return to pre-pandemic status” with all courtrooms, judicial facilities, chambers, and offices being “fully opened and staffed by judges and other personnel.” In re General Statewide Judicial Emergency, No. 553 Judicial Administration Docket (Pa. June 21, 2021). In anticipation of the cessation of the local judicial emergencies, and the reinstatement of any statewide rules restricting the use of ACT, the Administrative Office of Pennsylvania Courts (AOPC), in conjunction with the Pennsylvania Conference of State Trial Judges, created a Remote Proceedings Task Force (“Task Force”) to examine best ACT practices and make recommendations concerning the future use of ACT in the courts. The Task Force compiled information on lessons learned by judges concerning ACT usage, identified those proceedings which judges should consider conducting by ACT post-pandemic, and suggested procedural rule changes that may be necessary

to facilitate that continued use of ACT. The Task Force addressed those issues with respect to all court proceedings, and also focused individually upon civil, criminal, family, juvenile, orphans, and minor court proceedings.

Upon request, President Judges and District Court Administrators provided information and data relating to their judicial districts' experiences with ACT, the types of proceedings for which ACT may be used effectively post-pandemic, and any anticipated legal or logistical impediments to such ACT use. In addition, the Task Force solicited and received comments from interested stakeholders, including the Pennsylvania Bar Association Civil Litigation Section, Criminal Law Section, Family Law Section, Juvenile Law Section, and Real Property, Probate, and Trust Law Section, the Pennsylvania Association for Justice, the Pennsylvania Defense Institute, the Pennsylvania District Attorneys Association, the Pennsylvania Association of Criminal Defense Lawyers, the Public Defenders Association of Pennsylvania, the Pennsylvania Legal Aid Network, Inc., the Juvenile Court Judges Commission, the Office of Children and Families in the Courts, the Domestic Relations Association of Pennsylvania, the Pennsylvania Coalition Against Domestic Violence, the Domestic Violence Awareness Project, the Special Court Judges Association of Pennsylvania, Mid-Penn Legal Services, the Philadelphia District Attorney Office, the Allegheny County District Attorney Office, the Philadelphia Defenders Association, the Philadelphia Department of Human Services, Community Legal Services of Philadelphia, the Philadelphia Bar Association, and the Allegheny County Bar Association. Productive information was also obtained from the National Center for State Courts and the Report and Recommendations published by the Pennsylvania Bar Association Joint Task Force on the Continuity of Delivery of Legal Services on February 26, 2021.

On June 30, 2021, the Task Force issued its report and recommendations concerning best practices involving ACT, court proceedings which judges should consider continuing to conduct by ACT following the termination of local judicial emergencies, and those rule changes that may be warranted in order to vest judges with the discretion to do so. The Task Force greatly acknowledges the invaluable assistance provided by Daniel A. Durst, Esquire, Chief Counsel to the Supreme Court Rules Committees; the AOPC's Judicial Education Administrator, Darren M. Breslin, Esquire; and its Judicial Services Administrator, Nicholene F. DiPasquale.

REMOTE PROCEEDINGS TASK FORCE

Hon. Terrence R. Nealon, Chair
Lackawanna County

Hon. David L. Ashworth
Lancaster County

Hon. Tamara R. Bernstein
Cambria County

Hon. Kim Berkeley Clark
Allegheny County

Hon. John H. Foradora
Jefferson County

Hon. Barbara A. McDermott
Philadelphia County

Hon. Lois E. Murphy
Montgomery County

Hon. George W. Overton
Philadelphia County

Hon. Edward D. Reibman
Lehigh County

Hon. Sandra Lea Stevanus
Somerset County

Hon. Margherita Patti-Worthington
Monroe County

Hon. George N. Zanic
Huntingdon County

BEST A.C.T. PRACTICES FOR ALL COURT PROCEEDINGS

Although the use of ACT in the various judicial divisions is addressed separately below, the following recommendations apply generally to all court proceedings:

- As local judicial emergencies terminate, any statewide or local rules that limit the use of ACT no longer remain suspended and instead become effective again.¹ Until such time as the Supreme Court has had an opportunity to consider the Task Force recommendations and to propose any rule changes they deem warranted, it is recommended that the Supreme Court continue to grant temporary authority to the courts to conduct proceedings through the use of ACT, to the extent that constitutional requirements can be satisfied, until further Order of the Supreme Court.
- In determining whether to conduct a judicial proceeding by ACT, the presiding judicial officer should consider the applicable rules of court, established law, and constitutional provisions; the availability, connectivity, clarity, and appropriateness of the technology being utilized; the security of the participants and their surrounding environment; the means by which to receive and disseminate documentary evidence; the convenience to the participants; the efficient and effective administration of justice; the potential benefit of in-person interaction; the public's right of access to the particular proceeding; and the solemnity, formality, and decorum required to maintain the public's confidence in the judiciary and respect for the rule of law. Before conducting any proceedings by ACT, the court should ensure that no participant is prejudiced by the use of ACT. In the pursuit of efficiency and expediency, judges should be cautious not to compromise an accused's rights to confront witnesses, to be present at critical stages of criminal proceedings, and to the effective assistance of counsel by maintaining the ability to confer privately with counsel during the ACT proceeding.

¹ As of June 18, 2021, approximately half of Pennsylvania's judicial districts continued to operate under a judicial emergency. <https://www.pacourts.us/ujs-coronavirus-information>.

- The continued use of ACT is intended for the convenience of parties, witnesses, lawyers, and the public, and the cost-savings that they will experience from reduced travel and counsel fees related to such travel. Therefore, while litigants, attorneys, and witnesses may participate in the proceeding from a remote location, judges shall be present in the courthouse, judicial center, or other court facility whenever a proceeding is being conducted by ACT, except for extenuating circumstances such as when court properties have been closed due to inclement weather or other emergency under Pa.R.J.A. Nos. 1950-1954, or a proceeding is not being conducted during normal business hours.
- To facilitate the use of ACT and to ensure reliable means for communication between the court, counsel, and parties, each judicial district should amend their entry of appearance requirements or create a confidential form for all parties, including self-represented litigants, and counsel to provide their mailing addresses, telephone numbers, email addresses, and cellphone numbers at which they can receive text messages.
- The existing procedural rules do not contain a uniform definition of ACT. Pa.R.Crim.P. 103 and Pa.R.J.C.P. 120 set forth virtually identical definitions of ACT, whereas Pa.R.C.P.M.D.J. 202 provides a more narrow definition. It is recommended that a single definition of ACT be adopted in all rules which defines ACT as “any communication equipment that is used as a link between the court and others in physically separate locations, and includes, but is not limited to: systems providing for two-way simultaneous communication of image and sound; closed-circuit television; telephone and facsimile equipment; and electronic mail. The following additional uniform definitions are also recommended:

Video and audio communication: any system of multiple party, multiple location, simultaneous communication of both video and sound, in which all parties can both see and hear, and all parties can be seen and can be heard;

Audio communication: any system of multiple party, multiple location, simultaneous audio in which all parties can hear

and be heard, including, but not limited to, telephone communication and internet based audio communication;

Electronic communication: any system to transmit writing, printing, images or data by wire, internet, electromagnetic, photo electronic or photo optical device, including, but not limited to, facsimile, email, electronic filing, file sharing, text message, or other social media platforms.

- To the greatest extent possible, a proceeding conducted by ACT should resemble an in-court proceeding in decorum and formality. All participants should dress and otherwise present professionally, as if appearing physically in a courtroom, and should be stationary in a quiet location with proper lighting and no external distractions. Virtual backgrounds should not be used, and all participants should refrain from eating, smoking, or viewing other matters during the proceeding. Any other person present with a participant at the remote location must be identified and should be visible throughout the proceeding. No person may attempt to communicate, electronically or otherwise, with any testifying witness, unless the witness is granted leave of court to confer privately with counsel. Any off-camera coaching of a testifying witness is prohibited and cause for the imposition of sanctions. See Shimkus v. Scranton Quincy Clinic Co., LLC, 2020 WL 7346570 (Lacka. Co. 2020) (imposing monetary sanctions on deponent and her counsel, and reporting the deponent's counsel to the Disciplinary Board of the Supreme Court of Pennsylvania, after counsel whispered answers surreptitiously to the deponent during her remote deposition testimony and the deponent parroted those answers in her responses to questioning).
- Judges should establish and distribute their operating procedures for proceedings being conducted by ACT. Counsel, self-represented litigants, the court reporter, and the public should be provided with the date and time of the hearing, as well as the log-in or call-in information and access codes for the proceeding. Notice of the ACT proceeding should be furnished in a format comparable to the notice utilized in the Court of Common Pleas of Allegheny County, an exemplar copy of which is appended to this report. The court procedures should also require the electronic exchange of exhibits

and witness lists in advance of the proceeding. During the ACT proceeding, all participants should identify themselves and spell their first and last names at the outset of the proceeding for the benefit of the court reporter. All participants should mute their devices unless they are called upon to speak or it is otherwise necessary for them to speak. Examples of model protocols for remote court proceedings can be found in “The Florida Bar Recommended Best Practices Guide For Remote Court Proceedings” published on February 25, 2021, and *available at* <https://legalfuel.com/wp-content/uploads/2021/04/TFB-Best-Practices-Guide-For-Remote-Court-Proceedings-2.pdf>.

- Suitable arrangements must be made in advance for participants who are Limited English Proficient (LEP), deaf, or hard-of-hearing. Appropriate platforms and settings must be used to facilitate virtual or video remote interpreting and sign language interpreting. For example, some features enable the sign language interpreter’s image to appear more prominently on the video screen so that deaf and hard-of-hearing participants may better visualize the interpreter’s signing.
- While there is continued interest in the use of ACT following the cessation of local judicial emergencies, there is great diversity among the judicial districts and individual judges as to the technology available to them and the judges’ level of skill, comfort, and sense of effectiveness and appropriateness in using ACT in specific instances. Ideally, the Task Force believes that each judge should have the discretion to use, or not use, ACT in given situations consistent with the factors recommended by the Task Force when determining whether to use ACT. However, some judicial districts may be concerned about the lack of uniformity among its judges and its impact upon the practice of law. Therefore, the Task Force recommends that each judicial district determine by local rule whether the use of ACT and the protocols governing its use will be at the discretion of individual judges, or uniform throughout the district at the direction of the President Judge.
- The use of ACT to effectuate the service of orders and filings, other than original process, is addressed in a limited fashion in the

sections below discussing family, juvenile, orphans, and minor court proceedings. The Task Force deems it advisable for the Supreme Court Rules Committees to comprehensively examine the use of ACT for service, and to recommend any rule changes that those Committees consider appropriate.

- In order to satisfy the public’s constitutional and common law rights to attend and have access to court proceedings, the Supreme Court authorized the courts in Pennsylvania to provide “live-stream access” of ACT proceedings to the public, or to make “a recording available as soon as possible after the proceeding has been concluded.” In re General Statewide Judicial Emergency, 230 A.3d at 1018. In proceedings to which the public had a right of access before the COVID-19 pandemic, courts in Pennsylvania have permitted the public to observe ACT proceedings by live-streaming those proceedings via Zoom, YouTube, and other dedicated court platforms. Protective measures have been implemented to safeguard the identity and privacy, and to ensure the safety, of witnesses and participants when necessary and supported by current law. ACT proceedings have been live-streamed or recorded for public access due to the temporary suspension of Pa.R.J.A. 1910 which generally prohibits the broadcasting or recording of court proceedings. However, it is anticipated that judges will continue to use ACT for remote proceedings, or hybrid proceedings in which some participants are present in the courtroom while others participate remotely by ACT, after the local judicial emergencies cease and Rule 1910 becomes effective again. Based upon the judiciary’s positive experience with live-streaming and recording of ACT proceedings during the local judicial emergencies, it is recommended that Rule 1910 be reviewed to determine whether any revision to the broadcasting and recording prohibition is warranted.

Some judicial divisions operate under statewide rules that address the use of ACT in certain matters, whereas other rules governing different divisions do not contain provisions concerning ACT use. For that reason, the Task Force has addressed each judicial division independently, and submits the following recommendations with respect to civil, criminal, family, juvenile, orphans, and minor court proceedings.

CIVIL LITIGATION

Unlike other procedural rules that expressly prohibit, *see, e.g.*, Pa.R.Crim.P. 119(A), or specifically authorize, *see, e.g.*, Pa.R.C.P. 1930.3, Pa.R.J.C.P. 128(C), 129(A)(1), 1129(A)(1), 1140(D), 1242(B)(4), 1406(A)(2), 1512(A)(3), 1608(E), and Pa.R.C.P.M.D.J. 215, the use of ACT in certain circumstances, the Pennsylvania Rules of Civil Procedure governing civil litigation are silent on the use of ACT in court proceedings. Out of necessity during the statewide and local judicial emergencies, trial courts have conducted civil proceedings by ACT, and in the process, have saved litigants, lawyers, and witnesses considerable travel time and expense and any associated inconvenience. The resulting time savings have enabled counsel to make more productive use of their available time and to devote their attention to other clients and pending matters. Judicial experience with remote proceedings has shown that many civil matters may be handled effectively and efficiently through the use of ACT.

Once the local judicial emergencies end, judges should retain the discretion to conduct certain civil proceedings by ACT in order to achieve continued savings for parties and their counsel. It is recommended that status/scheduling conferences, oral arguments on contested motions and petitions, and hearings or non-jury trials featuring limited testimonial and documentary evidence, should continue to be conducted by ACT even after the declared judicial emergencies cease. The Task Force submits that jury trials, including the jury selection process, pre-trial conferences pursuant to Pa.R.C.P. 212.3, settlement conferences under Pa.R.C.P. 212.5, and bench trials featuring more involved testimony and evidence are best conducted in-person, and it is not recommended that those matters be handled routinely by ACT.²

To enable judges to conduct the recommended civil matters by ACT, it is suggested that the following changes to the Pennsylvania Rules of Civil Procedure be considered. In contrast to other statewide rules, Pennsylvania Rule of Civil Procedure No. 76 does not contain a definition of “advanced

²The recommendation with respect to voir dire applies to instances where the judge is present in the courthouse and the members of the venire are in a remote location outside the courthouse or judicial facility. In the Court of Common Pleas of Philadelphia County, the jury selection process is currently conducted with the judge present in the courtroom and some members of the venire located in other rooms in the courthouse for social-distancing purposes, with those individuals participating in the jury selection process by way of simultaneous audio-visual communication. Since that voir dire is conducted entirely on court property, the Task Force does not consider it within the ambit of the recommendation that voir dire not be conducted by ACT.

communication technology,” and it is recommended that Pa.R.C.P. 76 be amended to include the uniform definition proposed by the Task Force. While no statewide procedural rule prohibits the use of ACT in civil litigation, it is recommended that a specific Rule of Civil Procedure be adopted to expressly vest trial judges with the discretion to conduct civil proceedings, with the exception of jury trials, by ACT. Additionally, pursuant to the authority granted by Pa.R.C.P. 239.2, 239.3, 239.5, 239.6, and 239.7, judicial districts may promulgate local rules setting forth specific procedures governing the presentation and consideration of petitions, motions, preliminary objections, motions for judgment on the pleadings, and motions for summary judgment by ACT.

CRIMINAL PROCEEDINGS

As noted above, the Pennsylvania Rules of Criminal Procedure allow for the use of ACT in court proceedings. Pursuant to Pa.R.Crim.P. 119(A) courts may utilize two-way simultaneous audio-visual communication in any criminal proceeding except: preliminary hearings; proceedings involving court-ordered mental health examinations pursuant to Rule 569(A)(2)(b); mandatory status conferences under Rule 595 for transfers from criminal to juvenile proceedings; hearings on motions requesting such transfers pursuant to Rule 597; trials; sentencing hearings; parole, probation, and intermediate punishment revocation hearings; and any proceeding in which the defendant has a constitutional or statutory right to be physically present.³ During the statewide and local judicial emergencies, those proceedings were conducted in whole or in part utilizing ACT.

The Task Force recommends that the prohibition against using ACT (absent consent) in Rule 119(A) remain in effect with regard to Pa.R.Crim.P. 569(A)(b)(2) and 597 and jury trials, except using ACT to conduct in-courthouse jury selection, as referenced in n.2, should be authorized. It is recommended that the catchall provision in Rule 119(A)(7), which prohibits the use of ACT in any proceeding in which the defendant has a constitutional or statutory right to be physically present, also remain in effect.

³ Under Pa.R.Crim.P. 119 (B), even the proceedings identified above may be conducted using ACT if the defendant consents.

However, the Task Force recommends vesting presiding judges with the discretion to use ACT to conduct preliminary hearings⁴; status conferences in juvenile transfer proceedings; bench trials; sentencing hearings; and parole, probation, and intermediate punishment revocation hearings. To accomplish such ACT use, it is recommended that Pa.R.Crim.P. 119(A)(1)-(6) be amended accordingly.⁵ In addition, it is recommended that Pa.R.Crim.P. 602(A) be amended to clarify that the defendant’s presence at trial may occur through ACT. Finally, the Task Force recommends that Pa.R.Crim.P. 119 and 908 be revised to vest judges with the discretion to conduct post-conviction collateral proceedings by ACT.

The Task Force considered federal and state case law on the right of defendants to confront, and be confronted by, their accuser, as well as any witnesses. While some case law suggests that there must be a specific finding of need or necessity before authorizing the use of ACT over a party’s objection, *see e.g., Commonwealth v. Atkinson*, 987 A.2d 743 (Pa. Super. 2009), *app. denied*, 608 Pa. 614, 8 A.3d 340 (2010), *People v. Jemison*, 952 N.W. 2d 394 (Mich. 2020), other courts have held that the use of two-way simultaneous audio visual communication in a criminal proceeding does not violate the Confrontation Clause. *U.S. v. Rosenschein*, 474 F.3d 1203 (D. N.M. 2020). *See also, Vazquez Diaz v. Commonwealth*, 167 N.E. 3d 822 (Mass. 2021)(Virtual hearing on a motion to suppress is not a *per se* violation of the Confrontation Clause). The Task Force recognizes that in 2003, the Pennsylvania Constitution was amended to remove language requiring “face to face” confrontation of witnesses, and instead provides for the right of criminal defendants to be “confronted with the witnesses against him.” Pa Const. Art. I, §9.

It is the consensus of the Task Force that in light of advances in ACT, including the proliferation of smart phones, familiarity with audio visual platforms such as Zoom and WebEx, and the general comfort and acceptance of using two way audio visual technology by the public, the Supreme Court may wish to incorporate its use in more criminal proceedings. However, the presiding judge should retain discretion to compel in person appearances when deemed appropriate.

⁴ To facilitate the waiver of a preliminary hearing, Pa.R.Crim.P. 541 may require amendment permitting the presiding officer to certify the waiver in writing. The AOPC may need to develop a form to record this in the file and CPCMS.

⁵ Pa.R.Crim.P. 119(A)(3) prohibits the use of ACT to conduct transfer proceedings (without consent) from criminal court to juvenile court pursuant to Rule 597. Conversely, under Pa.R.J.C.P. 394(B), ACT may be used to conduct transfer proceedings from juvenile court to criminal court at the presiding judge’s discretion.

FAMILY COURT

The Task Force examined Family Court matters generally, and concluded that ACT should be authorized to the greatest extent possible in Family Court matters, with only limited exceptions.

Initially, it is recommended that a general rule applicable to Family Court matters be promulgated, which reads:

“In the discretion of the presiding judicial officer, and consistent with applicable rules of court, established law and constitutional provisions, any judicial proceeding, including the deposition, testimony or submission of evidence of any party or witness, may be conducted by ACT.”

Upon the adoption of the general rule, Pa.R.C.P. 1930.3 may be repealed.

To facilitate the use of ACT in support matters, the Task Force recommends documents currently produced at a support conference per Pa.R.C.P. 1910.11(c) be provided five (5) days in advance of the conference.

To allow for signatures on documents, such as proposed orders, it is recommended that Pa.R.C.P. 1910.11(d) (2) (i) be amended to authorize the assigned judicial officer to sign the documents on behalf of parties participating via ACT, or a general rule in substantially the following form be adopted:

“The assigned judicial officer in any proceeding may sign on behalf of a party whose assent has been given by ACT. Any party contending such signature was improperly made shall object in writing within twenty (20) days of the entry of the order upon which such signature was based.”

It is recommended that other hearings, such as acknowledgements of paternity under Pa.R.C.P. 1910.15 (a), be authorized to proceed using ACT. This already occurs in other proceedings, such as bench warrant hearings under Pa.R.C.P. 1910.13-1(d) (2).

The rules provide that one may object “in writing or by personal appearance before the domestic relations section” to an order for income withholding, Pa.R.C.P. 1910.21 (e); the certification of a lien on real property, Pa.R.C.P.1910.22 (c); and to the attachment of assets held by a financial

institution, Pa.R.C.P. 1910.23 (b). It is recommended that the use of ACT be allowed for each of these matters.⁶

With regard to custody, partial custody, and visitation, Pa.R.C.P. 1915.1 - 1915.25, and actions for divorce or annulment, Pa. R.C.P. 1920.1-1920.92, it is recommended that those matters be authorized to be conducted using ACT.

Although marriage is largely covered by statute, 23 Pa.C.S.A. §§1102-1704, the statute is silent as to whether the marriage ceremony can be conducted by ACT. Since a judge who performs a marriage is engaging in a judicial act, the Task Force believes the judge-officiant may have the discretion to perform the ceremony by ACT, and certain situations, for example, where a party is quarantined or deployed overseas, or where time is of the essence to obtain insurance or other benefits, or finalize a relationship, may justify it. Therefore, the Task Force recommends the Rules of Civil Procedure be broad enough to permit a judge to conduct the marriage ceremony by ACT.

The use of ACT should be permitted in proceedings for emergency and temporary orders under the Protection from Abuse and Protection of Victims from Sexual Violence or Intimidation Acts, since such matters are conducted on an *ex parte* basis. 23 Pa.C.S. §§ 6107, 6110 and 42 Pa.C.S. §§ 61A06, 62A09. Due to concerns for the safety and security of the parties, ACT should be authorized in final hearings or in hearings to modify or discontinue an order only in exceptional circumstances.⁷ In proceedings for contempt under 23 Pa. C.S. § 6114 - 6114.1 and 42 Pa. C.S. § 62A14, non-party witnesses should be permitted to testify by ACT, but the parties should be allowed to participate by ACT only in exceptional circumstances. The Task Force recommends amending Pa. R.C.P.M.D.J. 1206-1209 to allow for ACT consistent with these proposals.

⁶ Form scheduling orders to appear for a conference on a complaint, Pa.R.C.P. 1910.27 (b), petitions for modification, Pa.R.C.P. 1910.27 (g), and recovery of support overpayment, Pa.R.C.P. 1910.27 (j), should be revised to include ACT instructions if those proceedings will be held using ACT.

⁷ “Exceptional circumstances” may include a party is incarcerated; unable to appear in-person due to distance, health or other infirmities; or to ensure the security of a party.

JUVENILE COURT

The Task Force examined the further use of ACT in juvenile delinquency and dependency proceedings. The Juvenile Court Procedural Rules already authorize the use of ACT in many proceedings. It is recommended this authorization not only continue, but be expanded as follows:

In the Delinquency Rules, it is recommended both the guardian, Pa.R.J.C.P. 131, and the victim, Pa.R.J.C.P. 132, be authorized to participate in proceedings via ACT, at the discretion of the presiding judge. In bench warrants proceedings for failure to appear, Pa.R.J.C.P. 140 (C)(1)(a) and 140 (D)(1)(a), it is recommended the juvenile and witnesses be permitted to participate via ACT. It is also recommended the rules authorize the use of ACT to conduct the hearing required under Pa.R.J.C.P. 140(C)(2) and 140 (D)(2).

There is already liberal authority in the Dependency Rules to utilize ACT to conduct proceedings. See, e.g., Pa.R.J.C.P. 1128 (C) and 1129. As with the Delinquency Rules above, in bench warrant proceedings for failure to appear, it is recommended that both parties, Pa.R.J.C.P. 1140 (B)(1), and witnesses, Pa.R.J.C.P. 1140 (C)(1), be authorized to appear via ACT, and that the hearings pursuant to Pa.R.J.C.P. 1140 (B)(2) and 1140 (C)(2) be conducted using ACT, at the discretion of the presiding judge. It is also recommended ACT be authorized to conduct hearings when a witness is out-of-county, Pa.R.J.C.P. 1140(C)(4). It is recommended ACT be authorized to conduct permanency hearings under Pa.R.J.C.P. 1609.

It is further recommended that Juvenile Court Procedural Rules, Pa. R.J.C.P. 120 and 1120, contain a definition of “good cause”.

ORPHANS' COURT

The Pennsylvania Orphans' Court Rules generally do not address the use of ACT in court proceedings, and thus the use of ACT is neither expressly prohibited nor specifically authorized. Prior to the judicial emergency, it was not uncommon for Orphans' Court judges to permit some expert witnesses or other witnesses, including witnesses or parties who are incarcerated, to testify by telephone or by video. Out of necessity during the statewide and local judicial emergencies, courts have conducted many and varied proceedings in the Orphans' Court division with the use of ACT, including many proceedings conducted in their entirety remotely by video and audio.

Following the end of the judicial emergencies, judges in the Orphans' Court Divisions should retain the discretion to conduct proceedings using ACT in order to promote increased access to justice and to promote efficiency for parties, attorneys and witnesses. Use of ACT can have advantages in many types of hearings and proceedings. There are particular advantages to allowing physicians, other expert witnesses, police officers, and other professionals to testify remotely using ACT. On a case by case basis, there may be sound reasons for a judge to permit parties and other witnesses also to participate remotely in hearings.

The Task Force recommends modest changes to the Orphans' Court Rules to assure that Orphans' Court judges may exercise broad discretion to conduct proceedings either permitting all parties and counsel to participate remotely using ACT, or permitting some witnesses or parties to testify and participate remotely, while most participants are present in the courtroom. Specifically the Task Force recommends that, in the discretion of the Judge, the following types of proceedings may be conducted using ACT, either with all parties or some parties and witnesses participating remotely:

- status and scheduling conferences,
- pre-trial conferences,
- oral arguments on motions and petitions,
- relatively short record proceedings.⁸

⁸ For example, uncontested adoptions, uncontested proceedings related to assisted reproduction, appointment of a guardian for a minor, hearings on a minor's application pursuant to the Pennsylvania Abortion Control Act, emergency guardianship hearings, and plenary guardianship hearings.

The Task Force also recommends that in the discretion of the local court, Orphans' Court proceedings such as calling of the Audit List and other Rule Return dates may be scheduled to be conducted either in person, partly remotely, or wholly remotely using ACT for some litigants, attorneys, or other participants. Bench trials in the Orphans' Court, including contested guardianship matters, will contests, contested fiduciary matters, and termination of parental rights hearings will generally be best conducted in person in the courtroom. However, the Task Force recommends that the court have significant discretion to conduct such proceedings by ACT, either in whole or in part. In particular, it is expected that certain witnesses who live at a distance may be permitted to testify using ACT while proceedings are conducted in the courtroom, provided that no party is disadvantaged and all parties are able to see and hear the witness. The Task Force recommends the adoption of a definition of ACT in the Orphans' Court Rules, as a section within rule 1.3⁹, and also recommends a new Rule 1.9 granting discretion to the judge to permit the use of ACT in all types of Orphans' Court proceedings. The Task Force further recommends amendments to Orphans' Court Rules 2.5, 3.5, 14.3, 14.6, 14.9, 14.11, and 14.13, to clarify that electronic notice may be provided in appropriate circumstances and to make clear that certain guardianship proceedings may be conducted with the use of ACT.

MINOR COURT

The Task Force reviewed the civil and criminal procedural rules implicated in matters before the minor judiciary to determine where it may be appropriate to recommend expanded authorization to use ACT in conducting court proceedings. As with other procedural rules, continued and expanded use of ACT is recommended in virtually all proceedings.

The Task Force recommends there be clarification on the type of communication permitted to obtain a search warrant and arrest warrant pursuant to Pa.R.Crim.P. 203(B) and (C) and 513 (B)(2) and (B)(3). There should be clarification on the mode of communication required, i.e., ACT, or electronic communication, or audio communication. The Task Force considers audio or electronic communication to be sufficient.

The Rules governing civil proceedings in the minor judiciary already permit the use of ACT. Pa.R.C.P.M.D.J. 215. For proceedings conducted in whole or in

⁹ As noted above, it is recommended that identical definitions of ACT, audio, video, and electronic communications be adopted in all procedural court rules.

part using ACT, it may be necessary to compel witnesses to attend and testify or to produce documents virtually. For this reason, it is recommended that Pa.R.C.P.M.D.J 213-214 be amended to authorize service of subpoenas, and to compel testimony or the production of documents, via ACT or electronic communications in minor court civil proceedings. It is similarly recommended that authorization be given to file and serve original civil process and to conduct actions for the recovery of possession of real property using ACT or electronic communications in minor court proceedings.¹⁰ To facilitate this authorization, amendments would be needed to Pa.R.C.P.M.D.J. 303-305, 307-314, 502(B), 506, 508, and 515-517. Electronic service should also be authorized in appeals. Pa.R.C.P.M.D.J. 1005(E).¹¹

It is likewise recommended that the use of ACT and electronic communication be authorized in summary cases. Pa.R.Crim.P. 103 should be amended to authorize the use of ACT to conduct summary proceedings at the discretion of the magisterial district judge. Similarly, it is recommended that electronic communication and ACT be authorized for the acceptance of pleas, Pa.R.Crim.P. 407-409, 412-414, 422-424, to conduct proceedings, Pa.R.Crim.P. 431, 441, 454, and 456, and in emergency protection from abuse matters, Pa.R.C.P.M.D.J. 1206, 1207, and 1209.

¹⁰ The Task Force recommends consideration be given to authorizing filing and service by electronic communication in appropriate situations. Only adversarial proceedings should be conducted using ACT.

¹¹ The AOPC may need to develop a form for CPCMS to address the hearing officer's certification of the petition under Pa.R.C.P.M.D.J. 1211(B).

Allegheny County Protocols and Remote Hearing Notice for ACT hearings

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
_____ DIVISION

Case Caption: _____
Docket Number: _____

NOTICE OF REMOTE HEARING

A _____ hearing is scheduled before Judge _____ for the
_____ day of _____ 2021 at _____.

Due to the COVID-19 pandemic, the hearing will take place remotely through Microsoft Teams.

Although you will be participating remotely, please understand that the hearing will be conducted the same way that hearings are conducted in a courtroom.

1. You must dress appropriately (Pajamas, beach attire, etc. are not appropriate.)
2. Smoking, eating, or the use of alcohol or controlled substances is not permitted during the hearing.
3. Please go to a quiet place to participate in the hearing. Outside noises (traffic), barking dogs, televisions, radios, etc. are disruptive to the hearing.
4. Mute your telephones.

To join the meeting by video or audio, please follow the instructions below. Please call in or connect 5 minutes before the scheduled time of the hearing. **Please understand that another hearing may still be in progress and that you may have to wait until others join the hearing. We ask for your patience and that you stay on the line until we have concluded the previous hearing.**

INSTRUCTIONS

TO JOIN THE HEARING BY VIDEO (THIS IS PREFERRED):

If you received an email invitation, you can join by video using a smart phone, iPad or tablet, or a laptop or computer with a camera and a microphone. **To join the meeting by video you must use Microsoft Teams.** The email invitation you receive will contain a link to the meeting with instructions on using Teams. Teams is available over the web or by installing an app on your phone, iPad, tablet or laptop. **It is easier to connect if you download the free App from the Google Play Store or the App Store.**

For more information on using Teams, please connect to the tutorials through this link:
https://support.office.com/en-us/article/microsoft-teams-video-training-4f108e54-240b-4351-8084-b1089f0d21d7?wt.mc_id=otc_home

TO JOIN THE HEARING BY AUDIO ONLY WITH YOUR PHONE (No email invitation required):

Dial: 1-412-_____

When prompted, put in the following Conference ID Number following by #:

This Conference ID Number is also listed in the email invitation you received.

Protocol BEFORE the hearing:

1. As soon as possible, but not less than twenty-four (24) hours before the scheduled hearing, the Court shall provide counsel (or the parties in the case of self-represented or pro se litigants) and the court reporter with the information needed to participate in the hearing through ACT, including the date and time of the hearing, the log- in/call-in information and any access codes.

2. It is the responsibility of the attorneys to provide this information to their clients and to their witnesses.

3. The lawyers should remind their clients and witnesses to dress appropriately for the hearing.

4. It is the responsibility of self-represented litigants to provide this information to their witnesses.

5. The attorneys shall exchange exhibits by email (with a copy to the Court) in the times frames specified by applicable rule or by order of court. All exhibits shall be pre-marked. A list of exhibits with a description shall be emailed with the copies of the exhibits. (Best practice is to utilize share point for the exchange and presentation of exhibits.)

6. Objections to the use of copies as exhibits shall be raised pre-trial/hearing.

7. Twenty-four (24) hours before the hearing the attorneys shall provide all counsel, the court, and the Office of the Court Reporters with a witness list, which shall include the case caption and docket number, the type of proceeding or hearing, and the names of all prospective witness (correct spellings of first and last names).

8. Witness lists may be emailed to the Office of the Court Reporters at the following email address: gkushner@alleghencycourts.us.

9. The court shall provide the attorneys with the email address to send the witness list.

10. Self-represented litigants shall not be required to provide a witness list.

11. All parties and witnesses must log-in or call in at least five minutes before the scheduled starting time of the hearing.

12. The court should take care to schedule the hearings to prevent overlap in the hearings. (Best practice is schedule each hearing in its own time slot, with its own link or access code.)

Protocol DURING the hearing:

1. Introduce yourself. (Good morning, I am Judge). Announce the Case, Docket Number and purpose of the hearing.

2. Inform all parties that the hearing is being recorded and ask the court reporter to identify herself or himself.

3. Ask the lawyers to identify themselves and spell their first and last names.

4. Ask the parties and/or witnesses to identify themselves and spell their first and last names. If a witness is participating by audio only, the court must be satisfied that the person participating by audio is who they purport to be (voice recognition, verification by an attorney, etc.).

5. If needed, the court can and should inquire whether anyone else is in the room with a party or witness and ask those persons to identify themselves. If the court is concerned that a party is being influenced, coached, or intimidated, the witness or party should not be permitted to participate by ACT.

6. Swear in all of the witnesses and parties.

7. Ask everyone to mute their devices until such time that they are called upon to speak.

8. Please instruct everyone to wait until they are called upon to speak and to not interrupt or speak out.

9. Please instruct those who are participating by video to turn their cameras on when testifying.

10. Remind everyone, that the same rules apply for virtual hearings as with hearing in a courtroom (no smoking, eating, etc.)

11. Ask the lead attorney (by name) if they are ready to proceed.

12. Ask the lead attorney (by name) to call the first witness.

13. Ask the witness to un-mute their device.

14. After the attorney is finished questioning the witness, ask the next attorney (by name) if he/she has any questions. Do this each time.

15. Always remember to ask anyone speaking to state his or her name so that the court reporter knows who is speaking. Always address each person by name when you are asking a question or speaking to them.

16. Always identify yourself (the judge) when you are speaking (this is Judge). You cannot presume that the court reporter will recognize voices and depending on the number of participants, the court reporter might not easily be able to see who is speaking. Additionally, witnesses or parties who are participating by audio only or telephone will not be able to see who is speaking.