

in court proceedings. Every month, the Pennsylvania Supreme Court has granted our Petitions, in part, and has authorized the President Judge to suspend state or local rules that restrict the use of ACT in court proceedings, subject to state and federal constitutional limitations. The Orders further require that 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.

6. 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 April 30, 2021 as a proactive, preventative and necessary measure and in support thereof avers:

- a. The full vaccination rate in the 43rd Judicial District remains under the average for all of Pennsylvania and our daily case count continues to be high and continue rising, with a current daily average of 107 new cases. This daily case count matches the County's statistics from our largest spike in cases to date: December 2020. Additionally, earlier this month, we surpassed our highest 2020 case numbers with an average daily case count of 134.
- b. Over the month of December, Monroe County's ICU utilization rate is currently 83%, which is considered "high." However, over the month of December, ICU utilization did spike to "critical" levels (90%) and likely only decreased due to transfers to ICUs in other jurisdictions as our average daily number of COVID hospitalization has increased by

10.5% over the last seven days.

- c. The County's current COVID-19 incident rate per 100,000 is 474.0, with a percent positivity rate of 20%. These numbers are on par with what Monroe County was experiencing at the height of the pandemic in December of 2020. Moreover, our incident rate per 100,000 has increased 60% since our last petition filed on November 30, 2021.
- d. Currently, Monroe County's daily new cases per 100,000 is more than double that of Philadelphia County and nearly double that of other larger jurisdictions including, Chester, Montgomery, Bucks and Delaware Counties. Notably, all of these larger jurisdictions also have significantly higher vaccination rates than Monroe County.
- e. The statewide statistics likewise remain troublesome as Pennsylvania's daily case average is 7,649.
- f. Moreover, as the newest variant, Omicron, makes its way through the U.S., with confirmed cases in the areas surrounding Monroe County, we must remain vigilant in our efforts to maintain social distancing and other countermeasures. Indeed, while the trajectory of this variant is still unclear, preliminary research indicates, and our current statistics appear to support, that the Omicron variant is more transmissible and replicates more quickly than either of its predecessors.
- g. Notwithstanding the foregoing or what we might be facing in the near future, 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.

- h. Unfortunately, over the month of December, we have seen recent outbreaks of COVID-19 in three separate court-related Departments housed within the Courthouse. At least one of the outbreaks has led to employee hospitalization and yet another to employee ICU hospitalization. Thanks in large part to our current protocols, which include the invaluable use of ACT, we have been able to contain further spread within the Courthouse.
- i. 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. This is especially true in light of two recent COVID-19 outbreaks: one in our Sheriff's Office, reducing the number of deputies available for in-court proceedings, and one in the Public Defender's Office, which reduced the number of defense attorneys available for in-court proceedings.
- j. 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 while COVID-19 transmission rates remain high 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.

- k. Since March 12, 2020, we have had 9,566 criminal dispositions, including 122 total trial dispositions, 45 of which were jury trials and 30 were bench trials. We continue to work consistently to reduce the backlog of cases that resulted from the initial state-wide shut down of Court Facilities and have nearly accomplished this monumental task.
- l. 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, in addition to safe social distancing. 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.
- m. Nearly every Custody petition filed in this Court requires either a hearing or a conciliation conference. Custody filings in Monroe County remain steady and the accompanying hearings and conciliations are conducted utilizing ACT, with at least 24 ACT custody proceedings being scheduled every week. 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 our Custody caseload without compromising on space, safety, or efficiency.

- n. 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.
- o. The vaccination rate of our local jail population remains 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.
- p. Though Monroe County's case numbers have been steadily rising through the month of December, COVID cases at the jail have been surprisingly low. Due to space constraints at the jail, a COVID-19 outbreak is incredibly difficult to contain when it does occur, as statistics from our previous Petitions have shown. However, due in large part to this Court's use of ACT, the jail has been able to effectively keep the infection rate under 5% throughout the pandemic.
- q. 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.

- r. 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 more widespread infection at the jail.
- s. 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 April 30, 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", written over a horizontal line.

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