

**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Pa.R.Civ.P. 244

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.Civ.P. 244 for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **December 13, 2021**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Civil Procedural Rules Committee,

Honorable Christine A. Ward
Chair

**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE**

REPORT

Proposed Adoption of Pa.R.Civ.P. 244

The Civil Procedural Rules Committee is considering proposing to the Supreme Court the adoption of Pennsylvania Rule of Civil Procedure 244 to govern the use of Advance Communication Technology in civil proceedings.

In July of 2021, the Committee received a report prepared by the Administrative Office of Pennsylvania Courts and the Pennsylvania Conference of State Trial Judges concerning the “continued use” of Advance Communications Technology (“ACT”). Given that the use of ACT in civil proceedings has been governed by procedural rule, the report made the following recommendations:

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.^[1]

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 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.

Remote Proceedings Task Force: Continued Use of Advanced Communication Technology (ACT) Following the Termination of Judicial Emergencies, at pp. 9-10 (June 2021) (footnote omitted). The report also recommended the use of ACT for the service of orders and filings.

The Committee proposes Pa.R.Civ.P. 244 to generally authorize the use of ACT in civil proceedings, with two express prohibitions, and be subject to parameters established by local rule. Each judicial district will be required to promulgate a local rule setting forth the proceedings for which ACT may be used and the procedures to request its use. The use of ACT would be prohibited for jury trials and jury selection when potential jurors are not located separately from the courthouse or judicial facility. The prohibition on the use of ACT for jury trials under this rule is not intended to prohibit the introduction of testimony through other permitted means. See, e.g., 4017.1 (Video Deposition); Pa.R.Civ.P. 4020 (Use of Depositions at Trial).

Additional prohibitions suggested by the Task Force, including pre-trial conferences, Pa.R.Civ.P. 212.3, settlement conferences, Pa.R.Civ.P. 212.5, and bench trials were not included in the proposed rule. Based upon the observations of Committee members, the use of ACT for those proceedings did not appear to be less effective than when they are conducted in-person. Judges are able, or will be able, to evaluate witness credibility and weigh evidence in other proceedings using ACT; therefore, that ability should not be limited when conducting bench trials in civil proceedings, if permitted by local rule.

The Committee invites all comments, concerns, and suggestions.

(This is an entirely new rule.)

Rule 244. Advanced Communication Technology.

- (a) **Definition.** “Advanced communication technology” shall mean any communication technology providing for two-way simultaneous communication of image and sound.

- (b) **General Rule.**
 - (1) Unless otherwise prohibited by subdivision (c), proceedings may be conducted using advanced communication technology in accordance with local rule.

 - (2) Each judicial district shall promulgate a local rule identifying the proceedings that may be conducted via advanced communication technology in the judicial district and the procedures for using advanced communication technology.

- (c) **Prohibition.** The use of advanced communication technology is prohibited for the following proceedings:
 - (1) jury selection, unless the prospective jurors are located outside of the courthouse or judicial facility; and

 - (2) jury trials.

Comment: Subdivision (c)(1) addresses those instances when the judge is present in the courthouse and the potential jurors are in a remote location outside the courthouse or judicial facility. It is not intended to preclude the use of advanced communication technology when the judge is present in the courtroom and potential jurors are located in other rooms of the courthouse for social-distancing purposes.