

RULE **[23] 132**. CONTINUOUS AVAILABILITY AND TEMPORARY ASSIGNMENT OF ISSUING AUTHORITIES.

(A) Continuous Availability

(1) The president judge of each judicial district shall be responsible for insuring the availability at all times within the judicial district of at least one issuing authority.

(2) The issuing authority assigned to be on duty after business hours shall set bail as provided in Chapter **[4000] Chapter 5 Part C**, and shall accept deposits of bail in any case pending in any magisterial district within the judicial district.

(B) Temporary Assignment

(1) The president judge may assign temporarily the issuing authority of any magisterial district to serve another magisterial district whenever such assignment is needed:

(a) to satisfy the requirements of paragraph (A)(1);

(b) to insure fair and impartial proceedings;

(c) to conduct a preliminary hearing pursuant to Rule **[143] 544(B)**; or

(d) otherwise for the efficient administration of justice.

One or more issuing authorities may be so assigned to serve one or more magisterial districts.

(2) Whenever a temporary assignment is made under this rule, notice of such assignment shall be filed with the clerk of courts where it shall be available for police agencies and other interested persons.

(3) A motion may be filed requesting a temporary assignment under paragraph (B)(1) on the ground that the assignment is needed to insure fair and impartial proceedings. Reasonable notice and opportunity to respond shall be provided to the parties.

(4) A motion shall be filed requesting a temporary assignment under paragraph (B)(1)(c) whenever the attorney for the Commonwealth elects to proceed under Rule ~~[143]~~ 544(B) following the refiling of a complaint.

COMMENT: This rule is intended to impose the responsibility on the president judge to prevent the violation of the rights of defendants caused by the lack of availability of the issuing authority.

Paragraph (A)(2) requires an issuing authority on duty after business hours to set bail, as provided by law, and to accept deposits of bail in any case pending in any magisterial district within the judicial district, so that a "defendant may be admitted to bail on any date and at any time." Rule ~~[4001]~~ 520(B).

Nothing in this rule is intended to preclude judicial districts from continuing established procedures or establishing new procedures for the after-hours acceptance of deposits of bail by a representative of the clerk of courts' office.

Paragraphs (B)(1)(b) and (3) make explicit the authority of president judges to assign issuing authorities when necessary to insure fair and impartial proceedings, and to provide a procedure for a party to request such an assignment. Temporary assignment in this situation is intended to cover what might otherwise be referred to as "change of venue" at the district justice level. See, e.g., *Sufrich v. Commonwealth*, 447 A.2d 1124 (Pa. Cmwlt. 1982).

The motion procedure of paragraph (B)(3) is intended to apply when a party requests temporary assignment to insure fair and impartial proceedings. The president judge may, of course, order a response and schedule a hearing with regard to such a motion. However, this paragraph is not intended to require "a formal hearing...beyond the narrow context of a motion for temporary assignment of issuing authority to insure fair and impartial proceedings predicated upon allegations which impugn the character or competence of the assigned issuing authority and which seek the recusal of the assigned issuing authority." See *Commonwealth v.*

Allem, 532 A.2d 845 (Pa. Super. 1987) (filing and service of the written motion and answer, and allowance of oral argument were more than adequate to meet the rule's requirements).

Paragraphs (B)(1)(c) and (4) govern those situations in which the attorney for the Commonwealth, after refileing the complaint following the withdrawal or dismissal of any criminal charges at, or prior to, a preliminary hearing, determines that the preliminary hearing should be conducted by a different issuing authority. See *also* Rule **[143] 544** (Reinstating Charges following Withdrawal or Dismissal). Under Rule **[143] 544**, the president judge may designate another judge within the judicial district to handle reassignments.

The motion procedure is not intended to apply in any of the many other situations in which president judges make temporary assignments of issuing authorities; in all these other situations the president judges may make temporary assignments on their own without any motion, notice, response, or hearing.

NOTE: Formerly Rule 152, adopted January 16, 1970, effective immediately; amended and renumbered Rule 23 September 18, 1973, effective January 1, 1974; amended October 21, 1983, effective January 1, 1984; amended February 27, 1995, effective July 1, 1995; amended October 8, 1999, effective January 1, 2000 **[.] ; renumbered Rule 132 and amended March 1, 2000, effective April 1, 2001.**

* * * * *

COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the February 27, 1995 amendments published with the Court's Order at 25 Pa.B. 936 (March 18, 1995).

Final Report explaining the October 8, 1999 amendments concerning motions for temporary assignment of issuing authority following the reinstatement of criminal charges published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at Pa.B. (_____, 2000).