

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA. CODE CHS. 20 AND 100]

Order Adopting New Rule 143, Amending Rule 23, Revising the Comment to Rule 107, Joining Rules 141 and 142 as New Rule 141 and Renumbering Present Rule 143; No. 256, Criminal Procedural Rules Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the procedures for reinstating charges that have been withdrawn or dismissed at, or prior to, a preliminary hearing, and for an attorney for the Commonwealth, following the refile of a complaint, to request that a different issuing authority be assigned to preside at the preliminary hearing. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 8th day of October, 1999, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 28 Pa.B. 1505 (March 28, 1998), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 706); and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

1. new Pa.R.Crim.P. 143 is promulgated,
2. the amendments to Rule 23 are adopted,
3. the revision of the Comment to Rule 107 is approved,
4. the joinder of Rules 141 and 142 as new Rule 141 is adopted, and
5. Rule 143 is renumbered Rule 142, all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 2000.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 100. PROCEDURE IN COURT CASES

PART IV. PROCEEDINGS BEFORE ISSUING AUTHORITIES

[This is an entirely new rule.]

Rule 143. Reinstating Charges Following Withdrawal or Dismissal.

(A) When charges are dismissed or withdrawn at, or prior to, a preliminary hearing, the attorney for the Commonwealth may reinstate the charges by approving, in writing, the refile of a complaint with the issuing authority who dismissed or permitted the withdrawal of the charges.

(B) Following the refile of a complaint pursuant to paragraph (A), if the attorney for the Commonwealth

determines that the preliminary hearing should be conducted by a different issuing authority, the attorney shall file a Rule 23 motion with the clerk of courts requesting that the president judge, or a judge designated by the president judge, assign a different issuing authority to conduct the preliminary hearing. The motion shall set forth the reasons for requesting a different issuing authority.

Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000. New Rule 143 adopted October 8, 1999, effective January 1, 2000.

Comment

This rule provides the procedures for reinstating criminal charges following their withdrawal or dismissal at, or prior to, the preliminary hearing.

The authority of the attorney for the Commonwealth to reinstate charges that have been dismissed at the preliminary hearing is well established by case law. See, e.g., *McNair's Petition*, 187 A. 498 (Pa. 1936); *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997). This authority, however, is not unlimited. First, the charges must be reinstated prior to the expiration of the applicable statute(s) of limitations. See *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997). In addition, the courts have held that the reinstatement may be barred in a case in which the Commonwealth has repeatedly rearrested the defendant in order to harass him or her, or if the rearrest results in prejudice. See *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997); *Commonwealth v. Shoop*, 617 A.2d 351 (Pa. Super. 1992).

The decision to reinstate charges must be made by the attorney for the Commonwealth. Therefore, in cases in which no attorney for the Commonwealth was present at the preliminary hearing, the police officer may not refile the complaint without the written authorization of the attorney for the Commonwealth. See Rule 107 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option) for procedures for prior approval of complaints.

Pursuant to paragraph (A), in the usual case, charges will be reinstated by filing a complaint with the issuing authority who dismissed or permitted the withdrawal of the charges. However, there may be cases in which the attorney for the Commonwealth determines that a different issuing authority should conduct the preliminary hearing, such as when an error of law is made by the issuing authority in finding that the Commonwealth did not sustain its burden to establish a prima facie case. Paragraph (B) requires that, in these cases, the attorney for the Commonwealth must file a petition with the court of common pleas requesting that the president judge, or a judge designated by the president judge, assign a different issuing authority to conduct the preliminary hearing. For the procedure for requesting assignment of a different issuing authority, see Rule 23.

See Chapter 9000 for the procedures governing motions.

Committee Explanatory Reports:

Final Report explaining new Rule 143 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

CHAPTER 20. ISSUING AUTHORITIES: VENUE, LOCATIONS, AND RECORDING OF PROCEEDINGS

Rule 23. Continuous Availability and Temporary Assignment of Issuing Authorities.

[(a)] (A) Continuous Availability

* * * * *

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

[(b)] (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)] (A) (1) [,] ;

(b) to insure fair and impartial proceedings [,] ;

(c) to conduct a preliminary hearing pursuant to Rule 143(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)] (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(B) following the refile of a complaint.

Official 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.**

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 [**district justice**] **issuing authority**.

Paragraph [(a)] (A)(2) requires a [**district justice**] **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 [(b)] (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)] (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*, [**68 Pa. Commw. 42,**] **447 A.2d 1124 (Pa. Cmwlth. 1982).**

The motion procedure of paragraph [(b)] (B)(3) is intended [**only**] 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 refile of 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 (Reinstituting Charges following Withdrawal or Dismissal). Under Rule 143, 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.

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).

CHAPTER 100. PROCEDURE IN COURT CASES

PART II. COMPLAINT PROCEDURES

Rule 107. Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option.

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Official Note: Adopted December 11, 1981, effective July 1, 1982; Comment revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 107 and amended August 9, 1994, effective January 1, 1995 [.] ; **Comment revised October 8, 1999, effective January 1, 2000.**

Comment

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See Rule 2002A for a similar option as to search warrant applications.

See Rule 143 for the procedures requiring the written approval of the attorney for the Commonwealth for the refiling of a complaint.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report concerning the October 8, 1999 Comment revision published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

[This is an entirely new rule.]

Rule 141. Preliminary Hearing; Continuances.

(A) The attorney for the Commonwealth may appear at a preliminary hearing and:

- (1) assume charge of the prosecution; and
- (2) recommend to the issuing authority that the defendant be discharged or bound over to court according to law.

(B) When no attorney appears on behalf of the Commonwealth at a preliminary hearing, the affiant may be permitted to ask questions of any witness who testifies.

(C) The defendant shall be present at any preliminary hearing except as provided in these rules, and may:

- (1) be represented by counsel;
- (2) cross-examine witnesses and inspect physical evidence offered against the defendant;
- (3) call witnesses on the defendant's behalf, other than witnesses to the defendant's good reputation only;
- (4) offer evidence on the defendant's own behalf, and testify; and
- (5) make written notes of the proceedings, or have counsel do so, or make a stenographic, mechanical, or electronic record of the proceedings.

(D) If a prima facie case of the defendant's guilt is not established at the preliminary hearing, and no application for a continuance, supported by reasonable grounds, is made by an interested person, and no reason for a continuance otherwise appears, the issuing authority shall discharge the defendant.

(E) *Continuances*

The issuing authority may, for cause shown, grant a continuance and shall note on the transcript every continuance together with:

- (1) the grounds for granting each continuance;
- (2) the identity of the party requesting such continuance; and

(3) the new date and the reasons that the particular date was chosen.

Official Note: Former Rule 141, previously Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998; rescinded October 8, 1999, effective January 1, 2000. Former Rule 142, previously Rule 124, adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; renumbered Rule 142 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; effective date extended to July 1, 1982; amended July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986; rescinded October 8, 1999, effective January 1, 2000. New Rule 141, combining former Rules 141 and 142, adopted October 8, 1999, effective January 1, 2000.

Comment

As the judicial officer presiding at the preliminary hearing, the issuing authority controls the conduct of the preliminary hearing generally. When an attorney appears on behalf of the Commonwealth, the prosecution of the case is under the control of that attorney. When no attorney appears at the preliminary hearing on behalf of the Commonwealth, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Paragraph (C)(3) is intended to make clear that the defendant may call witnesses at a preliminary hearing only to negate the existence of a prima facie case, and not merely for the purpose of discovering the Commonwealth's case. The modification changes the language of the rule interpreted by the Court in *Commonwealth v. Mullen*, 333 A.2d 755 (Pa. 1975). This amendment was made to preserve the limited function of a preliminary hearing.

For the contents of the transcript, see Rule 26.

Committee Explanatory Reports:

Final Report explaining the February 13, 1998 amendments concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

Final Report explaining new Rule 141 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

Rule 141. Preliminary Hearing. **Rescinded.**

[(A) The attorney for the Commonwealth may appear at a preliminary hearing and:

- (1) assume charge of the prosecution; and**
- (2) recommend to the issuing authority that the defendant be discharged or bound over to court according to law.**

(B) When no attorney appears on behalf of the Commonwealth at a preliminary hearing, the affiant may be permitted to ask questions of any witness who testifies.

(C) The defendant shall be present at any preliminary hearing except as provided in these rules, and may:

- (1) be represented by counsel;
- (2) cross-examine witnesses and inspect physical evidence offered against the defendant;
- (3) call witnesses on the defendant's behalf, other than witnesses to the defendant's good reputation only;
- (4) offer evidence on the defendant's own behalf, and testify; and
- (5) make written notes of the proceedings, or have counsel do so, or make a stenographic, mechanical, or electronic record of the proceedings.

(D) If a prima facie case of the defendant's guilt is not established at the preliminary hearing, and no application for a continuance, supported by reasonable grounds, is made by an interested person, and no reason for a continuance otherwise appears, the issuing authority shall discharge the defendant.]

Official Note: Formerly Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998 [.] ; rescinded October 8, 1999, effective January 1, 2000, and replaced by new Rule 141.

[Comment

As the judicial officer presiding at the preliminary hearing, the issuing authority controls the conduct of the preliminary hearing generally. When an attorney appears on behalf of the Commonwealth, the prosecution of the case is under the control of that attorney. When no attorney appears at the preliminary hearing on behalf of the Commonwealth, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Paragraph (C)(3) is intended to make clear that the defendant may call witnesses at a preliminary hearing only to negate the existence of a prima facie case, and not merely for the purpose of discovering the Commonwealth's case. The modification changes the language of the rule interpreted by the Court in *Commonwealth v. Mullen*, 333 A.2d 755 (Pa. 1975). This amendment was made to preserve the limited function of a preliminary hearing.]

Committee Explanatory Reports:

Final Report explaining the February 13, 1998 amendments concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

Final Report explaining the October 8, 1999 rescission published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

Rule 142. Continuance of a Preliminary Hearing. **Rescinded.**

[The issuing authority may, for cause shown, grant a continuance and shall note on the transcript every continuance together with:

- (1) the grounds for granting each continuance,
- (2) the identity of the party requesting such continuance, and
- (3) the new date and the reasons that the particular date was chosen.]

Official Note: Formerly Rule 124 adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; renumbered September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; effective date extended to July 1, 1982; amended July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986 [.] ; rescinded October 8, 1999, effective January 1, 2000, and replaced by new Rule 141(E).

[Comment

For the contents of the transcript, see Rule 26.]

Committee Explanatory Reports:

Final Report explaining the October 8, 1999 rescission published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

Rule [143] 142. Disposition of Case at Preliminary Hearing.

(a) If the Commonwealth establishes a prima facie case of the defendant's guilt, the issuing authority shall hold the defendant for court. Otherwise, the defendant shall be discharged. In either event, the decision of the issuing authority shall be publicly pronounced.

(b) When the defendant has been held for court, the issuing authority shall:

- (1) set bail as permitted by law if the defendant did not receive a preliminary arraignment; or
- (2) continue the existing bail order, unless the issuing authority modifies the order as permitted by Rule 4008(a).

Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996 [.] ; renumbered Rule 142 October 8, 1999, effective January 1, 2000.

Comment

Paragraph (b) was amended in 1983 to reflect the fact that a bail determination will already have been made at the preliminary arraignment, except in those cases where, pursuant to a summons, the defendant's first appearance is at the preliminary hearing. See Rules 109 and 110.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the September 13, 1995 amendments published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the October 8, 1999 renumbering of Rule 143 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

FINAL REPORT¹

New Pa.R.Crim.P. 143, Amendments to Rule 23, Revision of the Comment to Rule 107, Joinder of Rules 141 and 142 as New Rule 141, and Renumbering of Former Rule 143

Reinstitution of Criminal Charges Following Withdrawal or Dismissal at, or Prior to, Preliminary Hearing

On October 8, 1999, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court adopted new Pa.R.Crim.P. 143 (Reinstating Charges Following Withdrawal or Dismissal), amended Rule 23 (Continuous Availability and Temporary Assignment of Issuing Authorities), revised the Comment to Rule 107 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option), combined Rules 141 (Preliminary Hearing) and 142 (Continuance of a Preliminary Hearing), and renumbered former Rule 143 (Disposition of Case at Preliminary Hearing), effective January 1, 2000. New Rule 143 and the correlative rule changes provide the procedures for reinstating charges that have been withdrawn or dismissed at, or prior to, a preliminary hearing, and provide for an attorney for the Commonwealth, following the refile of a complaint, to request that a different issuing authority be assigned to preside at the preliminary hearing.

Background

The Committee began its consideration of providing in the Criminal Rules procedures for the reinstatement of criminal charges after receiving correspondence that raised concerns about the lack of uniform, statewide procedures for refile of a criminal complaint following the dismissal of a case at the preliminary hearing. The correspondents pointed out that, without any procedures in the Criminal Rules addressing the reinstatement of criminal charges, the attorneys for the Commonwealth follow informal procedures that vary from judicial district to judicial district, and even from case to case. In addition, they suggested that because of the absence of uniform, statewide procedures, sometimes defendants are unfairly and unnecessarily subjected to multiple "rearrests" for the same offense. Finally, the correspondents indicated that, in the usual case, the defendant is not provided with notice of the reinstatement or an opportunity to object to the reinstatement of proceedings, or to a "change in venue" in those situations in which the attorney for the Commonwealth is able to have a different issuing authority assigned to conduct the preliminary hearing.

In considering the problems concerning the reinstatement of criminal charges raised by the correspondents, the Committee reviewed Pennsylvania case law to see how

the courts address the charging function of the attorneys for the Commonwealth in rearrest situations, and for guidance from the courts concerning proceeding with a case after the withdrawal or dismissal of charges. We found that the Pennsylvania courts have consistently held that the attorney for the Commonwealth has the discretion to reinstate a criminal case after it has been withdrawn or dismissed prior to the conclusion of the preliminary hearing. In fact, the courts have held that if the Commonwealth wants to continue prosecution following the withdrawal or dismissal of criminal charges, the attorney must proceed by reinstating the charges, rather than appealing the decision of the district justice or seeking a writ of certiorari. However, there are limitations on this discretion, such as in those cases in which (1) there is unreasonable intrusion, coercion, or harassment of the defendant by the government, (2) the process of reinstating the criminal charges would result in prejudice to the defendant, or (3) the statute of limitations has expired. See, generally, *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997). Finally, our research revealed that the courts generally have declined to mandate by case law one procedure for handling these cases, and themselves have addressed the matter only on a case-by-case basis.

In view of the case law, and in recognition of the facts that (1) the Criminal Rules are silent on procedures in rearrest cases, and (2) there is an apparent need to have procedures for the reinstatement of charges in the Criminal Rules, the Committee agreed to survey the district attorneys to learn how, exactly, they proceed in these cases. We received 43 responses to the survey, which indicated that:

1. By and large, the procedures used in these "rearrest" cases are informal, and used only on a case-by-case basis.
2. In most judicial districts, the district attorney has the discretion to decide whether the criminal charges should be reinstated. There are some counties, however, in which the district attorney must seek permission from the president judge to refile the complaint, or the district attorney is limited to one refile of the criminal charges.
3. Some attorneys for the Commonwealth refile a complaint with a different issuing authority; some refile a complaint with the same issuing authority and have a different issuing authority assigned to conduct the preliminary hearing. The district attorneys are already using Rule 23 as the tool to have another issuing authority assigned to the case. In some judicial districts, however, the burden is upon the issuing authority to request that the case be transferred to another issuing authority.
4. The number of cases in which the district attorneys determine that charges should be reinstated is relatively few; the number of cases in which the district attorneys determine that another issuing authority should preside over the preliminary hearing is fewer.

Although the responses revealed that the procedures that are being used vary among the judicial districts, and even from case to case, we found that many district attorneys are refile of the complaint with the same issuing authority, and some are requesting the reassignment of an issuing authority by filing a Rule 23 motion in the court of common pleas. Based on this "commonality," the Committee agreed to use these two concepts as a basis for the new procedures.

¹The Committee's Final Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

*Discussion of Rules**A. New Rule 143 (Reinstituting Charges Following Withdrawal or Dismissal)*

New Rule 143 sets forth the procedure for reinstating charges following a withdrawal or dismissal, and for requesting that a different issuing authority be assigned to conduct the preliminary hearing. The rule is divided into two paragraphs. Paragraph (A) provides that, in all cases, following the withdrawal or dismissal of charges, an attorney for the Commonwealth may reinstitute proceedings by authorizing, in writing, the refile of a complaint with the issuing authority who dismissed or permitted the withdrawal of charges. This provision contemplates that someone other than a district attorney, such as a police officer or other authorized individual, may refile the complaint, but only if they have written authorization from the attorney for the Commonwealth.

Paragraph (B) establishes procedures for those limited situations in which, following the refile of a complaint, the attorney for the Commonwealth determines that a different issuing authority should conduct the preliminary hearing. It provides that after the complaint is refiled, the attorney for the Commonwealth must file a motion in the court of common pleas pursuant to Rule 23 (Continuous Availability and Temporary Assignment of Issuing Authority) to request a "temporary assignment" of a different issuing authority and, in that motion, set forth the reasons for the request. The Rule 23 motion procedure will act as a filtering device to prevent unreasonable government intrusion, coercion, or harassment of the defendant, and will promote the balancing test discussed in *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997) (the need of the Commonwealth to re-present its case against the due process requirement that individuals shall be free from unreasonable and unnecessary government coercion).

The Comment cites relevant case law to (1) explain that it is the decision of the attorney for the Commonwealth to reinstate charges, and (2) identify the limitations on this authority. It also makes it clear that an individual, such as a police officer, may reinstitute the criminal proceedings, but that before the proceedings may be reinstated, the written approval of the attorney for the Commonwealth is required. In addition, the Comment (1) clarifies that in all cases charges will be reinstated by filing a complaint with the issuing authority who dismissed the charges or permitted the withdrawal, and (2) provides guidance about when the paragraph (B) procedure concerning those instances in which the attorney for the Commonwealth determines that a different issuing authority should conduct the preliminary hearing is triggered. Finally, the Comment includes cross-references to Rule 23 for the procedure to request assignment of a different issuing authority, and Chapter 9000, governing motions procedures, to emphasize that the defendant must be served with a copy of the Rule 23 motion, thus providing the defendant with the opportunity to challenge

the temporary assignment and the reinstatement of charges.

B. Rule 23 (Continuous Availability and Temporary Assignment of Issuing Authority)

Rule 23 provides the procedures for insuring the continuous availability of issuing authorities, and for the temporary assignment of issuing authorities in certain circumstances. Rule 23 has been amended to include two new paragraphs so that its application to new Rule 143 would be understood. Paragraph (B)(1)(c) provides that an issuing authority may be assigned to serve temporarily another magisterial district "to conduct a preliminary hearing pursuant to Rule 143(B)" after the refile of a complaint. Paragraph (B)(4) requires that a motion requesting a temporary assignment under paragraph (B)(1)(c) be filed when the attorney for the Commonwealth elects to proceed under Rule 143(B).

The Comment has been revised to include a provision clarifying that a formal hearing on a Rule 23 motion is only required when the temporary assignment is based on allegations which impugn the character or competence of the assigned issuing authority, and to make it clear that a formal hearing would not be required in every case in which reassignment is requested under new Rule 143.

C. Rule 107 (Approval of Police Complaints and Arrest Warrants by Attorney for the Commonwealth—Local Option)

Rule 107 provides that the district attorney of any county may require, prior to the filing of a criminal complaint or an arrest warrant, the approval by an attorney for the Commonwealth. This rule, however, only requires approval in those counties in which the district attorney has filed a certification with the court of common pleas. See Rule 107(b). The Rule 107 Comment has been revised to include a cross-reference to new Rule 143 to emphasize that, unlike the procedures set forth in Rule 107, under new Rule 143, written approval by the attorney for the Commonwealth is required in all cases in which criminal charges are reinstated by the refile of a complaint.

D. Rules 141 and 142, and former Rule 143: Placement of New Rule 143

Because the withdrawal or dismissal of criminal charges only occurs at or before the preliminary hearing, the new procedures concerning reinstatement of criminal proceedings have been placed near the rules addressing the disposition of cases at the preliminary hearing. To make room for the new rule, Rules 141 (Preliminary Hearing) and 142 (Continuance of a Preliminary Hearing) have been joined to make one rule, former Rule 143 (Disposition of Case at Preliminary Hearing) has become Rule 142, and the new rule has been numbered 143.

[Pa.B. Doc. No. 99-1792. Filed for public inspection October 22, 1999, 9:00 a.m.]