A PROPOSED RULE 131 CHANGE

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In this article, the author examines the Pennsylvania rules of court to inquire whether there is a basis for central court and, if so, what the process for establishing such a court should be. Reporting that there is little or no procedure currently in place, he paints a picture of what one ought to look like.

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INTRODUCTION.

It was in 1968 that the Commonwealth instituted the magisterial district courts. A few counties later began forming central courts, attempting to justify their creation by citing several disparate rules.

Central "places." A cryptic jurisdictional basis. "Temporary" assignments that last forever ... As written, the rules, including Rule 131, present problems that merit clarification of if or when there may be a central court.[1]

It is the goal of this article to examine whether Rule 131[2] ought to be changed to require a president judge desiring to create a central court to petition the Supreme Court for allowance to do so.

I. CREATING COURTS.

Courts do not create courts. Constitutions, and when constitutions so provide, legislatures create courts. The Constitution specifies that only the legislature "may establish additional courts or divisions of courts …" PA. CONST., ART. V, § 8. To create a new court, the General Assembly must act or allow action. *Id.*

It is provided in the Pennsylvania Constitution, Article V, Section 1 that:

> The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community

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[1] It is beyond the scope of this article to discuss whether central court is a good or bad idea. I refer the reader to my study for a comparison of magisterial district court and central court. It shows that in class 1 cities central courts are nonproblematic, but in class 2 through 8 counties central courts are indeed problematic. In the rural counties, magisterial district courts achieve better results. Brian R. Germano, Rethinking 1970's Court Reform: Magisterial District Court or Central Court? (2020).

[2] Pa.R.Crim.P. 131:

(B) When local conditions require, the president judge may establish procedures for preliminary hearings or summary trials, in all cases or in certain classes of cases, to be held at a central place or places within the judicial district at certain specified times. The procedures established shall provide either for the transfer of the case or the transfer of the issuing authority to the designated central place as the needs of justice and efficient administration require. Pa.R.Crim.P. 131 (B).

courts, municipal and traffic courts in the City of Philadelphia, such other courts as provided by law and justices of the peace. PA. CONST., ART. V, § 1.[3]

There is a safeguard, the requirement that assignment of judges to other courts or districts be temporary. Otherwise, using assignments, the courts might create courts. *See* PA. CONST., ART. V, §§ 10(a) ("temporarily"), 12(a) (referencing § 10(a)); 42 Pa.C.S. § 4122 (same); Pa.R.J.A. 605 ("temporary"), 701 (same).

It has been held that the Pennsylvania Constitution establishes the courts and the jurisdiction of each court, which may not be altered, amended, or nullified by rule. *Commonwealth v. White*, 324 A.2d 469 (Pa.Super. 1974).

Is it even constitutional, absent specific legislative action, to create a central court? The answer requires an in depth examination of constitutional, statutory, and rules provisions touching upon magisterial district court jurisdiction and venue.

II. JURISDICTION AND VENUE.

It is critical to examine the general principles of jurisdiction and venue[4] to determine whether there is a jurisdictional and venue basis upon which to create a central court.

A. JURISDICTION.

It is well established that jurisdiction is "the power of a court to hear a ... a case ..." Oxford Dictionary (2021). It is "[t]he power and authority constitutionally conferred upon (or constitutionally recognized as existing in) a court or judge." Black's Law Dictionary (2021), *citing* William Blackstone, *Commentaries on the Laws of England*, 4 vols., Oxford (1765-1769).

The definition of jurisdiction includes a few elements. It includes the power to exercise jurisdiction over:

1. A geographic area, a territory, a district, or a political subdivision, PA. CONST., ART. V;

2. A subject matter, *i.e*., a type of general class of claims or charges, 42 Pa.C.S. § 1515; and

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[3] In 1978, justices of the peace were replaced by district justices, who, in 2005, were retitled magisterial district judges.

[4] *See generally* Perry Dane, Jurisdictionality, Time, and the Legal Imagination, 23 HOFSTRA L. REV. 1 (1994), *especially* Section III (The Doctrine and Idea of Jurisdiction); Cass R. Sunstein, Participation, Public Law, and Venue Reform, 49 U. CHI. L. REV. 976 (1982), *especially* Section IA (Traditional Venue Rules).

3. A person or thing (*in personam*, *in rem*, *quasi in rem*),[5] 42 Pa.C.S. §§ 5301-5308, 5322.

These elements are conjunctive. All three elements are necessary for there to be jurisdiction. If any one element is missing, there is no jurisdiction. Jurisdiction lacking, there is no inherent judicial power. The judge may not hear the case.

It is the Constitution itself, Article V, that sets a magisterial district judge's geographical or territorial jurisdiction. *See* PA. CONST., ART. V.

Article V states, in pertinent part:

§ 7. Justices of the peace; magisterial districts.

(a) In any judicial district, other than the city of Philadelphia, where a community court has not been established or where one has been discontinued there shall be *one* justice of the peace in each magisterial district. The jurisdiction of the justice of the peace shall be as provided by law.
...

(b) ... The number and boundaries of magisterial districts of each class within each judicial district shall be established by the Supreme Court or by the courts of common pleas under the direction of the Supreme Court as required for the efficient administration of justice *within each magisterial district*. (emphasis added) PA. CONST., ART. V, § 7.

§ 10. Judicial administration.
...

(c) The Supreme Court shall have power to prescribe general rules ... if such rules are consistent with this Constitution and [do] no[t] affect *the right of the General Assembly to determine the jurisdiction of any court or justice of the peace*. (emphasis added) PA. CONST., ART. V, § 10.

§ 13. Election of justices, judges and justices of the peace; vacancies.

(a) Justices, judges and justices of the peace shall be elected at the municipal election next preceding the commencement of their respective terms of office *by the electors of the* Commonwealth or the *respective districts in which they are to serve*. (emphasis added) PA. CONST., ART. V, § 13.

It is evident from a reading of Article V that the Constitution itself sets territorial jurisdiction but leaves to the legislature subject matter jurisdiction. *Cf*. PA. CONST., ART. V § 7(a), s.1 (territorial jurisdiction) and s.2 (subject matter jurisdiction); 42 Pa.C.S. § 1515 (subject matter

[5] Based upon presence, domicile, land, chattel, minimum contacts, *etc*.

jurisdiction). In setting territorial jurisdiction, Article V limits a judge's jurisdiction to the boundaries of his electoral district.

It is, under Article V, unconstitutional to have a judge exercise jurisdiction over cases arising in districts other than his electoral district. He is not elected to hear them. His rulings are illegitimate. They are a nullity. *See* PA. CONST., ART. V, *especially* PA. CONST., ART. V, §§ 7 (magisterial districts), 10 (judicial administration), 11 (judicial districts), 13 (election).

It is necessary a judge have jurisdiction, but jurisdiction is just a starting point. There is more. Jurisdiction is a prerequisite to venue.

B. VENUE.

In general, venue is the court of choice, a court chosen to hear a case *when more than one court has jurisdiction* over the case because the act complained of, the locus delecti, has occurred in many places across different districts. If the act occurred in only one place, venue is not an issue. The case is to be heard in the only district in which it arose.

It is said that venue is the "district within which a criminal or civil case must be heard." Oxford Dictionary (2021). It is "[a] neighborhood; the neighborhood, place, or county in which an injury is declared to have been done, or fact declared to have happened." Black's Law Dictionary, *citing* William Blackstone, *Commentaries on the Laws of England*, 4 vols., Oxford (1765-1769).[6]

It must be emphasized that a rule of venue is only to designate in which court a case is rightfully "brought" if the *locus delecti* is spread across multiple districts. It may only limit the choice of court among those courts already having jurisdiction. It cannot create jurisdiction, least of all Article V electoral district jurisdiction.

It is important to distinguish between civil and criminal cases. In civil cases, there may be, and often are, several courts that have jurisdiction. The venue rules determine in which of those courts the action shall be "brought." In criminal cases, though, venue lies in one place, the district where the crime occurred.[7] *See* Pa.R.Civ.P.M.D.J. 302 (civil); Pa.R.Crim.P. 130 and *Comment* (criminal).

It has been held that it is improper for any magisterial district judge to entertain criminal proceedings where the crime is alleged to have been committed outside his district. *Commonwealth v. Pushkarsh*, 34 Fay.L.J. 10, 1971, *transferred to* 290 A.2d 124 (Pa. 1971).

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[6] The original meaning of "venue" in the English law was the neighborhood from which the jurors were required to be drawn because their personal knowledge of the facts and the parties formed the bases for decision. Shirley M. Sortor, Venue Problems in Wisconsin, 56 MARQ. L. REV. 87 (1972).

[7] There are special rules for multi-district crime sprees. *See* Pa.R.Crim.P. 130 (A)(2), (3).

It is instructive to look at statute and rule regarding venue.

1. 42 Pa.C.S. § 1515.

42 Pa.C.S. § 1515 (b) states, in pertinent part:

§ 1515. Jurisdiction and venue.
...

(b) Venue and process. — The venue of a district justice *concerning matters over which jurisdiction is conferred by subsection (a)* shall be prescribed by general rule. The process of the district justice shall extend beyond the territorial limits of the magisterial district to the extent prescribed by general rule. 42 Pa.C.S. § 1515 (b) (emphasis added).

We see that Section 1515 (b) refers to Section 1515 (a) subject matter jurisdiction, not territorial jurisdiction. Section 1515 does not create territorial jurisdiction beyond a judge's own electoral district. We also see that the language concerning a magisterial district judge acting beyond the territorial limits of his magisterial district extends only to process, not to jurisdiction.

2. Pa.R.Crim.P. 130.

It is sometimes argued that Rule 130 allows a judge to sit in a central court and exercise jurisdiction over cases arising in districts other than the judge's own electoral district.

It does not.

Rule 130 states, in pertinent part:

(A) Venue. All criminal proceedings in summary and court cases shall be *brought* before the issuing authority for the magisterial district in which the offense is alleged to have occurred or before an issuing authority on temporary assignment to serve such magisterial district, subject, however, to the following exceptions:
...

(6) When the president judge designates a magisterial district or a location in that district in which certain classes of offenses, which occurred in other specified magisterial districts, may be heard. (emphasis added) Pa.R.Crim. 130.

We see in Rule 130 (A) use of the term "brought." In this area of law, the term "brought" is used to refer to the place, the court, where a complaint is filed.

It is unquestionable, in view of Article V and Section 1515, that Rule 130 (A)(6) must be read as meaning only that a case may be "brought" in a court relocated at a central location. It is not at all a comment on

jurisdiction. It does not speak to what judge may hear the case being "brought."

It does not, and cannot, vest in a judge sitting at the central location the power to exercise jurisdiction over cases arising in electoral districts beyond his own. In order for the case to be heard at the central location, the judge having Article V jurisdiction must hear it.

III. THE RULES OF COURT.

In discussing, or rather mentioning, central court, the rules of court in this area are unusually obscure. They pose fundamental questions. Is there a basis for central court? If so, is there a defined process to establish one?

A. IS THERE A BASIS FOR CENTRAL COURT?

Is there?

It depends upon the sort of central court.

It is well settled that judges exercise jurisdiction over cases arising in their own electoral district, not beyond. It is only in instances of necessity, when an elected judge is unavailable, that another judge may act as a substitute and exercise the jurisdiction of the unavailable judge. *See* PA. CONST., ART. V.

1. Models.

There are many models of central courts, and they may be classified along a multitude of lines, but for present purposes it suffices to classify them as either limited and unlimited.

a. The Limited Model.

The limited model uses a relocated court at a central place or court, sometimes referred to as a "central court," in which a judge exercises jurisdiction over cases arising in his own electoral district.[8] *See* Pa.R.Crim.P. 131.

b. The Unlimited Model.

In contrast, the unlimited model uses a central court of judges staffed by so-called "*temporary*" assignment to sit, *forever*, as judges of other electoral districts, the central court judge exercising jurisdiction over cases arising in not only his own electoral district but over cases arising in all electoral districts other than his own.

[8] *E.g.*, the central court in Lebanon County.

2. Temporary Forever?

Temporary ... forever?

It seems a contradiction in terms.

It is.

Is the assignment to central court *ad tempus* or *ad infinitum*?

It is *ad infinitum*.

It is disingenuous to say such assignments are temporary. It defies the word's plain meaning and its meaning as used in constitution, statute, and rule.

It is a surprisingly basic question, but what does the term "temporary" mean?

a. The Plain Meaning.

It is instructive to examine the term's plain meaning and usage.

In common usage, the term "temporary" means "lasting or intended to be used only for a short time," Oxford Dictionary (2021), "not lasting or needed for a long time," Cambridge Dictionary (2021), or "continuing for a limited time," Meriam-Webster Dictionary (2021).

It is not temporary when it lasts forever. It is not temporary when a judge is scheduled – *ad infinitum* – to go to a court on an ongoing, recurring, continuing basis, to go to a court that is standing, budgeted, and separately staffed and docketed, and to go to a court to hear a flow of cases that is endless, enduring, and everlasting.

It may be argued that the assignments are only for a week at a time. Maybe they are.[9] Still, the assignments recur *ad infinitum*. They are not temporary.

b. The Technical Meaning.

It is also instructive to examine the use of the term "temporary" as used by judges when administering court.

It is traditional in this area of law to use the term "temporary" to describe the timeframe required for a judge to do the work of another judge when necessary because that judge is momentarily unavailable due to illness, leave, or disqualification.

[9] I am a judge in a county that has a block scheduling order. I hear criminal cases on one set day of the week, a week at a time. Is my hearing criminal cases temporary?

It is instructive, as well, to survey the authorities to examine the meaning of the term in the context of constitution, statute, and rule.

i. PA. CONST., ART. V, § 10.

Article V states, in pertinent part:

§ 10. Judicial administration.

(a) The Supreme Court shall exercise general supervisory and administrative authority over all courts and justices of the peace, including authority to *temporarily* assign judges and justices of the peace from one court or district to another as it deems appropriate. (emphasis added) PA. CONST., ART. V, § 10(a).

ii. 42 Pa.C.S. § 4122.

Section 4122 states, in pertinent part:

§ 4122. Assignment of magisterial district judges.

(a) General rule. — Subject to general rules any magisterial district judge may be *temporarily* assigned to any other magisterial district or the Pittsburgh Magistrates Court or the Traffic Court of Philadelphia, and may there hear and determine any matter with like effect as if duly commissioned to sit in such other district or in such court. (emphasis added). 42 Pa.C.S. § 4122. *See* also Pa.C.S. § 4123.

We see in Article V, § 10 and Section 4122 use of the term "temporary." Its importance must be underscored. It is the term used in those authorities as a stop against judges using long term assignments to create courts. Using long term assignments to create a court violates the Constitution and the Judicial Code. *See* PA. CONST., ART. V, §§ 10(c), 13, *supra*.

The text of Article V and Section 4122 do not further define the term "temporary."

Rule 701, however, does.

iii. Pa.R.J.A. 701 (C)(2), (3) (6).

Rule 701 states, in pertinent part:

Assignment of judges to courts.

...

(2) *Recommendation by the Court Administrator of Pennsylvania and Action by Chief Justice.* Upon the recommendation of the Court Administrator, the Chief Justice may, by order, assign any retired, former, or active magisterial district judge, judge or justice to

temporary judicial service on any court to fulfill a request by a president judge, or to reduce case inventories, or to serve the interest of justice. ...

(3) *Duration of Assignment.* Unless otherwise provided in the order of assignment, the order shall continue in effect after its stated expiration date until *unfinished business* pending before the assigned judge is completed. Pa.R.J.A. 701.

...

(6) *Restrictions on Temporary Assignments*. No judge shall be assigned under this rule to any court while any judge thereof is assigned to another court under this rule, except *when required to take the place of a judge who is recused or disqualified, or is otherwise unavailable, or under other appropriate circumstances*. (emphasis in body added) Pa.R.J.A. 701(C)(2), (3).

In discussing a "duration of assignment," Rule 701(c) makes it clear that an assignment, to be temporary, must meet at least two definitional criteria:

1. The assignment must be for the purpose of accomplishing the specified Section (6) special "unfinished business," and

2. The assignment must be one that has a "duration," a duration that ends upon completion of the specified Section (6) special "unfinished business."

The assignments to the central courts in question fail the Rule 701 two-part test. Indeed, the assignments fail both components:

1. The assignment in question is not for the purpose of conducting special "unfinished business," but for the purpose of conducting regular business, the business of handling ordinary case inventories, and

2. The assignment in question is not one that ends upon completion of "unfinished business," but is one that recurs *ad infinitum* and never ends.

It lasts ... forever.

In using the term "temporary," the drafters of Article V,[10] Section 4122,[11] and Rule 701[12] knew nothing of central court, there were no central courts at the time, and thus they were not contemplating such long-term central court assignments as temporary when they used the phrase.

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[10] Changed in 1968 by constitutional convention.
[11] Adopted in 1976.
[12] Adopted in 1966.

It was not until a 2021 amendment to Rule 605 that the rules even mentioned the term "central court," the only place in the rules to do so. *See* Pa.R.J.A. 605.

ii. Pa.R.J.A. 605 (as amended).

Rule 605 states, in pertinent part:

> 605. Supervision of magisterial district courts by president judges.
> ...
> (5) *Temporary Assignments*: *Transfer of Cases*—In consultation with the affected magisterial district judge(s), the president judge may order *temporary* assignments of magisterial district judges or reassignment of cases or certain classes of cases to other magisterial districts within the judicial district or central courts within the judicial district.
> ...
> As to paragraph (A)(5), compare Pa.R.Crim.P. 131(B), relating to central locations for preliminary hearings and summary trials. In addition, if the judicial district is part of a regional administrative unit, magisterial district judges may be assigned to any other judicial district in the unit. See Pa.R.M.D.J. 112 and Pa.R.J.A. No. 701(E). R.J.A. 605 (A)(5) and Official Note. Pa.R.J.A. 605.

In a vacuum, Rule 605 may be read as meaning:

1. There may be any sort of central court anywhere if a president judge says so, or

2. There may be only central courts in which judges hear their own cases, and, if there is a necessity, due to a judge being ill, on leave, or disqualified, then the president judge may temporarily assign a magisterial district judge as a substitute judge.

It is the latter version, version 2, that makes the most sense when the constitution, statute, and rules are read in *pari materia,* when the overall purpose of Rule 605 is considered, and when the official note is examined.

Thus, Rule 605 is merely an acknowledgement that the rules allow some form of central court, not all forms. It does not approve of a judge exercising jurisdiction over cases arising in districts beyond his own.

3. Erasing Constitution.

The note to Rule 605 tells us to "compare Pa.R.Crim.P. 131(B)." Is that meant to say that the rules are similar or dissimilar? It would be odd were there to be two rules completely the same. One would be

completely superfluous. It must mean there are differences, and indeed there are.

It is argued by those wanting to create unlimited central courts that these different rules, Rule 131 and Rule 605, may be "combined" to create such a central court.

Can they?

A detailed analysis is in order.

It is critical to examine both Rule 131 and Rule 605, especially the purpose as well as the text of each rule.

Rule 131 states in pertinent part:

> Rule 131. Location of Proceedings Before Issuing Authority.
> ...
> (B) When local conditions require, the president judge may establish procedures for preliminary hearings or summary trials, in all cases or in certain classes of cases, to be held at a central place or places within the judicial district at certain specified times. The procedures established shall provide either for the transfer of the case or the transfer of the issuing authority to the designated central place as the needs of justice and efficient administration require. Pa.R.Crim.P. 131 (B).

We see Rule 131 pertains to relocation of proceedings, not to assignment of substitute judges:

1. It *does not* include the term "temporary." Pa.R.Crim.P. 131.

2. It relocates a judge to a "central place," *e.g.*, a state prison in the district,[13] where he is to exercise jurisdiction over cases arising *in* his electoral district. Pa.R.Crim.P. 131.

In contrast, Rule 605 is quite different.

We see Rule 605 pertains to assignment of a judge, not to relocation of proceedings:

1. It *does* include the term "temporary." Pa.R.J.A. 605.

2. It assigns a judge to "another magisterial district court or central court" to exercise jurisdiction over cases arising *beyond* his electoral district. Pa.R.J.A. 605.

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[13] This is the example given in the comment to the rule. See Pa.R.Crim.P. 131, Comment.

Thus:

	R. 131	R. 605
temporary assignment?	No [A1]	Yes [B1]
unlimited jurisdiction?	No [A2]	Yes [B2]

Their "math" is:

$R_{131 + 605} = (A1 + B2) – (A2 + B1)$

Really?

They mix and match, taking what they want, discarding what they do not want.

They are adding parts of the rules. They are subtracting parts of the rules. They are adding A1 and B2 but subtracting A2 and B1.

In other words, they are adding Rule 131's time provision, allowing long term relocation, to Rule 605's jurisdiction provision, allowing unlimited jurisdiction, and subtracting Rule 131's jurisdiction provision, limiting jurisdiction, and Rule 605's time provision, limiting assignments to only those that are temporary.

Interestingly, they ascribe the Rule 131 time provision to the Rule 605 jurisdiction provision. Do they symmetrically ascribe the Rule 605 time provision to the Rule 131 jurisdiction provision? No. That would make relocation temporary.

They are, by mismatching elements, eliminating restrictions on jurisdiction and duration of assignments. They are eliminating the term "temporary," a term used in the Constitution as a stop against judges doing the very thing they are trying to do – creating a court.

Can Rule 131 and Rule 605 be "combined" to create an unlimited central court?

No.

In surveying the above, what do we learn? Is there a basis for central court?

It is one thing to assign a judge to another electoral district when a judge is unavailable due to illness, leave, or disqualification, or even when a judge is unable to meet the demands of an unusually large case inventory.

It is quite another thing altogether, and it is unconstitutional under Article V, to forever assign all judges to courts of all other electoral districts to conduct the usual, regular business of handling ordinary case inventories.

In the final analysis, there is no basis, either in the constitution, statute, or rules, upon which a judge sitting in a central court may exercise jurisdiction over cases arising in districts beyond his own.

B. IS THERE A PROCESS FOR ESTABLISHING A CENTRAL COURT?

There is not a process for establishing a central court.

Under Rule 131, a "central place" may be established only "when local conditions require." Who makes the determination? What is the standard? What is the process?

It is unspecified.

The question is what should it look like?

Let us paint a picture.

The Rule 131 determination of local conditions affects the very structure of the first tier of court. It is a matter beyond the scope of a president judges' ordinary prerogatives involving the daily operation of court. It thus merits Supreme Court review, and a proper review requires the Court be adequately informed of the matter.

It is helpful to consult some rules, especially Rules 701 and 103.

1. Pa.R.J.A. 701 (C)(1).

Rule 701 states, in pertinent part:

701. Assignment of judges to courts.

(C) *Request for the Assignment of Additional Magisterial District Judges or Judges.*

(1) *Request for Assignment.* Whenever a president judge deems additional judicial assistance necessary for the prompt and proper disposition of court business, he or his proxy shall transmit a formal request for judicial assistance to the Administrative Office. The request may be made in writing or it may be transmitted electronically. .... Pa.R.J.A. 701 (C)(1).

(2) *Recommendation by the Court Administrator of Pennsylvania and Action by Chief Justice.* Upon the recommendation of the Court Administrator, the Chief Justice may, by order, assign any retired, former, or active magisterial district judge, judge or justice to

temporary judicial service on any court to fulfill a request by a president judge, or to reduce case inventories, or to serve the interest of justice. ...

We see in Rule 701 precedent for a petition procedure such as the one being proposed. There are already provisions requiring a president judge to request such assignments, requiring recommendations by the Court Administrator, and requiring action by the Chief Justice. *Id*.

2. Pa.R.J.A. 103.

Rule 103 states, in pertinent part:

103. Procedure for adopting, filing, and publishing rules.

(a) *Notice of proposed rulemaking*

(1) Except as provided in subdivision (a)(3), the initial proposal of a new or amended rule, including any commentary that is to accompany the rule text, shall be distributed by the proposing Rules Committee to the *Pennsylvania Bulletin* for publication therein. The proposal shall include a publication notice containing a statement to the effect that written responses regarding the proposed rule or amendment are invited and should be sent directly to the proposing Rules Committee within a specified period of time, and a publication report from the Rules Committee containing the rationale for the proposed rulemaking.

(2) Written responses relating to the proposal shall be sent directly to the proposing Rules Committee within a specified number of days after the publication of the rule or amendment in the *Pennsylvania Bulletin*, and any written responses shall be reviewed by the said Committee prior to action on the proposal by the Supreme Court. Any further proposals which are based upon the written responses so received need not be, but may be, published in the manner prescribed in subdivision (a)(1).

(3) A proposed rule or amendment may be promulgated even though it has not been previously distributed and published in the manner required by subdivisions (a)(1) and (a)(2), where exigent circumstances require the immediate adoption of the proposal; or where the proposed amendment is of a typographical or perfunctory nature; or where in the discretion of the Supreme Court such action is otherwise required in the interests of justice or efficient administration. Pa.R.J.A. 103.

We see in Rule 103 precedent for a committee process such as the one being proposed. There is a rule requiring that a proposed local rule go through a committee process. There is a requirement that the proposed local rule be noticed, a committee review it, and, if approved in its original form or modified, published in a proper manner. *Id*.

It is no stretch to require the same procedures as seen in Rules 701 and 103 when a president judge wants to create a central court. It might be said that it is even more important to have these requirements in place in such matters when the very structure of court is at stake.

3. Input.

In addition to the topics covered by Rules 701 and 103, there are other aspects of the issue requiring attention, most notably the issue regarding a guarantee that the magisterial district judges be able to participate in the process. It is essential that there be a provision ensuring that magisterial district judges be given a voice and be heard of right.

It depends upon the number of judges and the length of their tenure, but, collectively, the magisterial district judges may have a century or so of experience running these courts. In this area, though lower ranking, the magisterial district judges are the experts.

In assessing local conditions, the judges running the magisterial district courts being discussed are, by the nature of things, the most informed, they are deserving of deference, and they must have a formal say in the process.

4. The Big Picture.

There is no process in place. There needs to be.

What ought it look like?

Rules 701 and 103 are often ignored, presumably on the ground that they do not apply specifically to establishing a central court. There ought to be a rule change expressly indicating their applicability.

It is preferable, however, that there be an all new rule or rule addition incorporating provisions similar to those in Rules 701 and 103 and addressing magisterial district judge participation as well.

It is thus appropriate to adopt a new rule and include in its language provisions requiring:

1. President judges petition the Supreme Court for creation of a central court,

2. The Supreme Court have available to it the option to send the petition to the Court Administrator and a rules committee, presumably the Minor Court Rules Committee, for committee work, including the making of recommendations, and

3. Magisterial district judges be heard of right.

Let us look beyond a rule as well. Is a rule necessary? Is there some other mechanism by which the process may be improved? Is there an alternative?

5. Alternatives.

It seems there is not a workable alternative.

There are a few informal measures available.

The Supreme Court may issue a guidance memo directing president judges meet the requirements of Rules 701 and 103. A memo saying so, however, does not accomplish important goals. It still does not formalize a process for committee work specific to these matters and does not give magisterial district judges a say.

In addition, magisterial district judges may petition a president judge for informal consultation. There is, however, already a requirement to consult. *See* Pa.R.J.A. 605. Nonetheless, many president judges have dismissed attempts to discuss the matter and instead have acted unilaterally.[14]

In this context, these "informal" measures are empty formalism. They are inadequate. They fail.

CONCLUSION.

It is time for adoption of a new rule or a rule change that requires a president judge desiring to create a central court to petition the Supreme Court for allowance to do so.

It is, above all else, a matter of interpreting the rules of court in an intellectually honest manner, countering the current effort to misconstrue the rules to justify creating unconstitutional central courts.

It is also on some level a matter of balancing competing interests. The proposal seems a reasonable compromise. The challenge is to maintain central courts in the cities but scrutinize creation of central courts in class 2 through 8 counties, allowing it only where there is a special situation. The proposal accomplishes that.

It is also a matter of maintaining the magisterial district courts, an important institution that has served the public well and in the rural counties have achieved much better results than central court.

The creation of unlimited central courts is repeat of a failed 1970's reform, an attack upon long fought for, finally realized state-wide court

[14] In a recent case, the president judge intimidated magisterial district judges by threatening to take, and taking, adverse action against them for opposing creation of a central court.

unification, and a throwback to chaotic localism.[15] It is opposed by most magisterial district judges, the defense bar, law enforcement, and the public.

The proposed rule change is aimed at improving the administration of justice, is right, proper, and honorable, and is in the highest traditions of the bench and bar.

[15] Robert T. Golembiewski, Public Administration as a Developing Discipline, New York, N.Y.: Marcel Dekker, Inc., 1977.