THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1300]

Amendment of Rule 1311.1 Governing an Appeal from an Award in Compulsory Arbitration; No. 455 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 16th day of May, 2006, Pennsylvania Rule of Civil Procedure 1311.1 is amended as follows.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective on July 1, 2006.

Annex A

TITLE 231. RULES OF CIVIL PROCEDUREc

PART I. GENERAL

CHAPTER 1300. ARBITRATION

Subchapter A. COMPULSORY ARBITRATION

Rule 1311.1. Procedure on Appeal. Admission of Documentary Evidence.

(a) The plaintiff may stipulate to **[$15,000.00] $25,000.00** as the maximum amount of damages recoverable upon the trial of an appeal from the award of arbitrators. The stipulation shall be filed and served upon every other party at least thirty days from the date the appeal is first listed for trial.

* * * * *

(e) The stipulation required by subdivision (a) shall be substantially in the following form:

(Caption)

Stipulation to Limitation of Monetary Recovery
Pursuant to Rule 1311.1

To: _____ :
(Name of Party/Parties)

_____, plaintiff, stipulates to **[$15,000.00] $25,000.00** as the maximum amount of damages recoverable upon the trial of the appeal from the award of arbitrators in the above captioned action.

_____
(Name of Plaintiff)

_____
(Attorney for Plaintiff)

_____
(Date)

* * * * *

Explanatory Comment

Rule 1311.1 governing the admission of documentary evidence upon the trial de novo of an appeal from the award of arbitrators in compulsory arbitration became effective September 1, 2003. The rule as originally promulgated applied to appeals in which the plaintiff stipulated to $15,000.00 as the maximum amount of recoverable damages in the appeal. In light of the favorable reception to the rule, the maximum amount of recoverable damages has been increased to $25,000.00.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 06-968. Filed for public inspection June 2, 2006, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1910]

Order Amending Rule 1910.19; No. 456 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 19th day of May, 2006, Rule 1910.19 of the Pennsylvania Rules of Civil Procedure is amended as follows.

This order shall be processed in accordance with Pa. R.J.A. 103(b) and shall be effective immediately.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.19. Support. Modification. Termination. Guidelines as Substantial Change in Circumstances.

(a) A petition for modification or termination of an existing support order shall specifically aver the material and substantial change in circumstances upon which the petition is based. A new guideline amount resulting from new or revised support guidelines may constitute a material and substantial change in circumstances. The existence of additional income, income sources or assets identified through automated methods or otherwise may also constitute a material and substantial change in circumstances.

(b) The procedure upon the petition shall be in accordance with Rule 1910.10 et seq.

(c) Pursuant to a petition for modification, the trier of fact may modify or terminate the existing support order in any appropriate manner based upon the evidence presented.

(d) All charging orders for spousal support and alimony pendente lite shall terminate upon the death of the payee spouse.

(e) Within one year of the date a child who is the subject of a child support order reaches eighteen (18) years of age, the domestic relations section shall issue an emancipation inquiry and notice to the obligee, with a copy to the obligor, seeking the following information:

(1) confirmation of the child's date of birth, date of graduation or withdrawal from high school;

(2) whether the child has left the obligee's household and, if so, the date of departure;

(3) the existence of any agreement between the parties requiring payments for the benefit of the child after the child has reached age eighteen (18) or graduated from high school; and

(4) any special needs of the child which may be a basis for continuing support for that child beyond the child's eighteenth birthday or graduation from high school, whichever is last to occur

The notice shall advise the obligee that if the inquiry is not returned within thirty (30) days of mailing or if there is no agreement or the child does not have any special needs, the charging order may be modified or terminated by the court. When no other children are subjects of the child support order and the obligee either does not return the emancipation inquiry within thirty (30) days of its mailing or does not assert grounds for continuing support for the child, then the court shall have the authority to administratively terminate the child support charging order without further proceedings at any time on or after the last to occur of the date the last child reaches age eighteen (18) or graduates from high school. Termination of the charging order shall not affect any arrears accrued through the date of termination. The court shall have the authority to enter an order requiring the obligor to pay on arrears in an amount equal to the amount of the charging order until all arrears are paid.

If the order applies to another child or children and/or the obligee asserts that there is an agreement between the parties or that a child has special needs requiring continued support, then the domestic relations section may schedule a conference to determine if the charging order should be modified.

(f) Upon notice to the obligee, with a copy to the obligor, explaining the basis for the proposed modification or termination, the court may modify or terminate a charging order for support and remit any arrears, all without prejudice, when it appears to the court that:

(1) the order is no longer able to be enforced under state law; or

(2) the obligor is unable to pay, has no known income or assets and there is no reasonable prospect that the obligor will be able to pay in the foreseeable future.

The notice shall advise the obligee to contact the domestic relations section within 60 days of the date of the mailing of the notice if the obligee wishes to contest the proposed modification or termination. If the obligee objects, the domestic relations section shall schedule a conference to provide the obligee the opportunity to contest the proposed action. If the obligee does not respond to the notice or object to the proposed action, the court shall have the authority to modify or terminate the order and remit any arrears, without prejudice.

Explanatory Comment—1993

Existence of Guidelines as Substantial Change in Circumstances. In its opinion in *Newman v. Newman*, **409 Pa. Super. Ct. 108,** 597 A.2d 684 (**[Pa. Super.]** 1991), the Superior Court held that enactment of the guidelines does not constitute a substantial change in circumstance which could serve as the basis for modification of a support order. The amended rule allows the trier of fact to consider new or revised rules as a change in circumstances where the change in the guidelines, either by itself or in combination with other factors, is material and substantial.

Explanatory Comment—2000

The Pennsylvania Child Support Enforcement System ("PACSES") is electronically linked to a variety of governmental and private agencies and institutions. This linkage enables PACSES to immediately locate and identify an obligor's income, income sources and assets. Rule 1910.19 is amended to provide that their identification through these automated methods provides a basis for modifying both the current support obligation and the rate of repayment on either past due or overdue support. Identification through means other than PACSES continues to provide the same basis for modification.

While identification of income sources or assets provides a basis for modification, this rule is not intended to prevent a court from ordering that the income or assets be frozen and seized under Rule 1910.26 pending the hearing on the petition for modification. Such relief remains available under Rule 1910.26 governing appropriate interim or special relief. See Rule 1910.1 Explanatory Comment. Nor is this rule intended to affect the court's ability to seize income or assets under Rule 1910.20 to secure an overdue support obligation.

Explanatory Comment—2002

Although support orders do not terminate automatically, many obligors are unaware of the necessity of filing a petition to terminate a child support order when the child becomes emancipated. As a result, old orders have continued to charge long after the subject child has become an adult. New subdivision (e) is intended to address this problem by giving the obligee notice of a proposed modification or termination of the order and the opportunity to object. If no objection is made, or if the obligee fails to respond with a reason to continue the order, the rule gives the court the authority to terminate or modify the charging order, depending upon whether or not other children are covered under the order.

Explanatory Comment—2006

New subdivision (f) addresses an increasing multiplicity of circumstances in which the continued existence of a court-ordered obligation of support is inconsistent with rules or law. An obligor with no known assets whose sole source of income is Supplemental Security Income or cash assistance cannot be ordered to pay support under Rule 1910.16-2. Likewise, an obligor with no verifiable income or assets whose institutionalization, incarceration or long-term disability precludes the payment of support renders the support order unenforceable and uncollectible, diminishing the perception of the court as a source of redress and relief. Often, the obligor is unable or unaware of the need to file for a modification or termination, or the parties abandon the action. In those circumstances, the courts are charged with managing dockets with no viable outcomes. Both the rules and the federal guidelines for child support under Title IV-D of the Social Security Act provide for circumstances under which a support order shall not be entered or under which a child support case may be closed. Subdivision (f) expands the authority of the courts to respond to case management issues brought about by changes in circumstances of the parties of which the courts become aware through the expansion of automated interfaces and data exchanges.

[Pa.B. Doc. No. 06-969. Filed for public inspection June 2, 2006, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 5 AND 10]

Order Amending Rules 529, 543 and 1011; No. 344 Criminal Procedural Rules; Doc. No. 2

Order

Per Curiam:

Now, this 19th day of May, 2006, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 33 Pa.B. 6410 (December 27, 2003), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 740), 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 Rules of Criminal Procedure 529, 543, and 1011 are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective August 1, 2006.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART C(1). Release Procedures

Rule 529. Modification of Bail Order Prior to Verdict.

(A) **[A bail order may be modified by an issuing authority at any time before the preliminary hearing upon the request of the defendant with the consent of an attorney for the Commonwealth, or at the preliminary hearing upon the request of either party.] The issuing authority who is the magisterial district judge who was elected or assigned to preside over the jurisdiction where the crime occurred, upon request of the defendant or the attorney for the Commonwealth, or by the issuing authority sua sponte, and after notice to the defendant and the attorney for the Commonwealth and an opportunity to be heard, may modify a bail order at anytime before the preliminary hearing.**

(B) **A bail order may be modified by an issuing authority at the preliminary hearing.**

(C) The existing bail order may be modified by a judge of the court of common pleas:

(1) at any time prior to verdict upon motion of counsel for either party with notice to opposing counsel and after a hearing on the motion; or

(2) at trial or at a pretrial hearing in open court on the record when all parties are present.

[(C)] (D) Once bail has been set or modified by a judge of the court of common pleas, it shall not **[thereafter]** be modified except

(1) by a judge of a court of superior jurisdiction, or

(2) by the same judge or by another judge of the court of common pleas either at trial or after notice to the parties and a hearing.

[(D)] (E) When bail is modified pursuant to this rule, the modification shall be explained to the defendant and stated in writing or on the record by the issuing authority or the judge.

Comment

In making a decision whether to modify a bail order, the issuing authority or judge should evaluate the information about the defendant as it relates to the release criteria in Rule 523 and the types of release on bail set forth in Rule 524.

In Municipal Court cases, the Municipal Court judge may modify bail in the same manner as a common pleas **[court]** judge may under this rule. See Rule 1011.

The procedures for modification of a bail order by the issuing authority were amended in 2006 to permit the issuing authority to modify bail at any time before the preliminary hearing on the issuing authority's own motion or request of a party when, for example, new information becomes available concerning the defendant that would affect the issuing authority's decision concerning the type of release and the conditions of release imposed at the preliminary arraignment. The 2006 amendments to paragraph (A) are not intended to affect bail procedures in the Philadelphia Municipal Court.

Once bail has been modified by a common pleas judge, only the common pleas judge subsequently may modify bail, even in cases that are pending before a district justice. See Rules 543 and 536.

Pursuant to this rule, the motion, notice, and hearing requirements in paragraphs **[(B)](C)**(1) and **[(C)] (D)**(2) must be followed in all cases before a common pleas judge may modify a bail order unless the modification is made on the record in open court either when all parties are present at a pretrial hearing—such as a suppression hearing—or during trial.

See Pa.R.A.P. 1762**[(a)](b)**(2) for the procedures to obtain appellate court review of an order of a judge of the court of common pleas granting or denying release, or modifying the conditions of release.

Official Note: Former Rule 4008 adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule **[530] 4010**. Present Rule 4008 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 529 and amended March 1, 2000, effective April 1, 2001; Comment revised August 24, 2004, effective August 1, 2005**; amended May 19, 2006, effective August 1, 2006**.

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. **[1477] 1478** (March 18, 2000).

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Final Report explaining the May 19, 2006 amendments concerning "pre-preliminary hearing" modification of bail by the issuing authority published with the Court's Order at 36 Pa.B. 2633 (June 3, 2006).

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 543. Disposition of Case at Preliminary Hearing.

(A) At the conclusion of the preliminary hearing, the decision of the issuing authority shall be publicly pronounced.

(B) 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.

(C) 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 529**[(A)]**.

(D) In any case in which the defendant fails to appear for the preliminary hearing:

(1) if the issuing authority finds that the defendant did not receive notice, or finds that there was good cause explaining the defendant's failure to appear, the issuing authority shall continue the preliminary hearing to a specific date and time, and shall give notice of the new date and time as provided in Rule 542(E)(2).

(2) If the issuing authority finds that the defendant's absence is without good cause and after notice, the absence shall be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority. In these cases, the issuing authority shall:

(a) proceed with the case in the same manner as though the defendant were present;

(b) if the preliminary hearing is conducted, give the defendant notice by first class mail of the results of the preliminary hearing; and

(c) if the case is held for court or if the preliminary hearing is continued, issue a warrant for the arrest of the defendant.

(3) When the issuing authority issues a warrant pursuant to paragraph (D)(2)(C), the issuing authority retains jurisdiction to dispose of the warrant until:

(a) the arraignment occurs; or

(b) the defendant fails to appear for the arraignment and the common pleas judge issues a bench warrant for the defendant.

Upon receipt of notice that the arraignment has occurred or a bench warrant has been issued, the issuing authority promptly shall recall and cancel the issuing authority's bench warrant.

(E) If the Commonwealth does not establish a prima facie case of the defendant's guilt, and no application for a continuance is made and there is no reason for a continuance, the issuing authority shall dismiss the complaint.

(F) In any case in which a summary offense is joined with misdemeanor, felony, or murder charges:

(1) If the Commonwealth establishes a prima facie case pursuant to paragraph (B), the issuing authority shall not adjudicate or dispose of the summary offenses, but shall forward the summary offenses to the court of common pleas with the charges held for court.

(2) If the Commonwealth does not establish a prima facie case pursuant to paragraph (B), upon the request of the Commonwealth, the issuing authority shall dispose of the summary offense as provided in Rule 454 (Trial In Summary Cases).

(3) If the Commonwealth withdraws all the misdemeanor, felony, and murder charges, the issuing authority shall dispose of the summary offense as provided in Rule 454 (Trial In Summary Cases).

Comment

Paragraph (C) reflects the fact that a bail determination will already have been made at the preliminary arraignment, except in those cases in which, pursuant to a summons, the defendant's first appearance is at the preliminary hearing. See Rules 509 and 510.

When a defendant fails to appear for the preliminary hearing, before proceeding with the case as provided in paragraph (D), the issuing authority must determine (1) whether the defendant received notice of the time, date, and place of the preliminary hearing either in person at a preliminary arraignment as provided in Rule 540(F)(2) or in a summons served as provided in Rule 511, and (2) whether the defendant had good cause explaining the absence.

If the issuing authority determines that the defendant did not receive notice or that there is good cause explaining why the defendant failed to appear, the preliminary hearing must be continued and rescheduled for a date certain. See paragraph (D)(1). For the procedures when a preliminary hearing is continued, see Rule 542(E).

If the issuing authority determines that the defendant received notice and has not provided good cause explaining why he or she failed to appear, the defendant's absence constitutes a waiver of the defendant's right to be present for subsequent proceedings before the issuing authority. The duration of this waiver only extends through those proceedings that the defendant is absent.

When the defendant fails to appear after notice and without good cause, paragraph (D)(2)(a) provides that the case is to proceed in the same manner as if the defendant were present. The issuing authority either would proceed with the preliminary hearing as provided in Rule 542(A), (B), (C) and Rule 543(A), (B), and (C); or, if the issuing authority determines it necessary, continue the case to a date certain as provided in Rule 542(E); or, in the appropriate case, convene the preliminary hearing for the taking of testimony of the witnesses who are present, and then continue the remainder of the hearing until a date certain. When the case is continued, the issuing authority still should send the required notice of the new date to the defendant, thus providing the defendant with another opportunity to appear.

Paragraph (D)(2)(c) requires the issuing authority to issue a bench warrant if the case is held for court or when the preliminary hearing is continued.

Pursuant to paragraph (D)(3), the defendant must be taken before the issuing authority for resolution of the bench warrant, counsel, and bail in those cases in which a defendant is apprehended on the issuing authority's bench warrant prior to the arraignment or the issuance of

a common pleas judge's bench warrant. See Rule 150 for the procedures in a court case after a bench warrant is executed.

For purposes of modifying bail once bail has been set by a common pleas judge, see Rules 529 and 536.

See Rule 571 (Arraignment) for notice of arraignment requirements.

Rule 542(D) specifically prohibits an issuing authority at a preliminary hearing from proceeding on any summary offenses that are joined with misdemeanor, felony, or murder charges, except as provided in paragraph (F) of this rule. Paragraph (F) sets forth the procedures for the issuing authority to handle these summary offenses at the preliminary hearing. These procedures include the issuing authority (1) forwarding the summary offenses together with the misdemeanor, felony, or murder charges held for court to the court of common pleas, or (2) disposing of the summary offenses as provided in Rule 454 by accepting a guilty plea or conducting a trial whenever (a) the misdemeanor, felony, and murder charges are withdrawn, or (b) a prima facie case is not established at the preliminary hearing and the Commonwealth requests that the issuing authority proceed on the summary offenses.

Under paragraph (F)(2), in those cases in which the Commonwealth does not intend to refile the misdemeanor, felony, or murder charges, the Commonwealth may request that the issuing authority dispose of the summary offenses. In these cases, if all the parties are ready to proceed, the issuing authority should conduct the summary trial at that time. If the parties are not prepared to proceed with the summary trial, the issuing authority should grant a continuance and set the summary trial for a date and time certain.

In those cases in which a prima facie case is not established at the preliminary hearing, and the Commonwealth does not request that the issuing authority proceed on the summary offenses, the issuing authority should dismiss the complaint, and discharge the defendant unless there are outstanding detainers against the defendant that would prevent the defendant's release.

Nothing in this rule would preclude the refiling of one or more of the charges, as provided in these rules.

See Rule 313 for the disposition of any summary offenses joined with misdemeanor or felony charges when the defendant is accepted into an ARD program on the misdemeanor or felony charges.

See Rule 1003 (Procedure in Non-Summary Municipal Court Cases) for the preliminary hearing procedures in Municipal Court.

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; renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; amended March 9, 2006, effective September 1, 2006**; amended May 19, 2006, effective August 1, 2006**.

Committee Explanatory Reports:

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Final Report explaining the May 19, 2006 amendments correcting cross-references to Rule 529 published with the Court's Order at 36 Pa.B. 2633 (June 3, 2006).

CHAPTER 10. RULES OF CRIMINAL PROCEDURE FOR THE PHILADELPHIA MUNICIPAL COURT AND THE PHILADELPHIA TRAFFIC COURT

PART A. Philadelphia Municipal Court Procedures

Rule 1011. Bail.

(A) Prior to verdict, an existing bail order may be modified by a Municipal Court judge in a Municipal Court case in the same manner as a judge of the court of common pleas may modify a bail order pursuant to Rule 529**[(B), (C), and (D)] (C), (D), and (E)**.

(B) In all cases in which a sentence is imposed, the execution of sentence shall be stayed and the bail previously set shall continue, except as provided in this rule.

(1) If a notice of appeal or a petition for a writ of certiorari is not filed within 30 days, the judge shall direct the defendant to appear before the judge for the execution of sentence.

(2) If a notice of appeal is filed within 30 days, the bail previously set shall continue.

(3) If a petition for a writ of certiorari is filed within 30 days, bail shall be determined as provided in Rule 521(B)(1) and (2).

(C) The attorney for the Commonwealth may make application to the Court of Common Pleas to increase the amount of bail upon cause shown.

Comment

Paragraph (A) was added in 1995 to conform the practice for Municipal Court judges modifying a bail order before verdict in Municipal Court cases with the practice set forth in Rule 529 for judges of the common pleas court.

Official Note: Rule 6011 adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective August 1, 1980; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; amended February 21, 1996, effective July 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 1011 and amended March 1, 2000, effective April 1, 2001**; amended May 19, 2006, effective August 1, 2006**.

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. **[1477] 1478** (March 18, 2000).

Final Report explaining the May 19, 2006 amendments correcting cross-references to Rule 529 published with the Court's Order at 36 Pa.B. 2633 (June 3, 2006).

FINAL REPORT[1]

Amendments to Pa.Rs.Crim.P. 529, 543, and 1011

Modification of Bail by Magisterial District Judges

On May 19, 2006, effective August 1, 2006, upon the recommendation of the Criminal Procedural Rules Com-

[1] The Committee's Final Reports 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.

mittee, the Court amended Rules 529, 543, and 1011. The changes provide that an issuing authority may modify a bail order at anytime following the preliminary arraignment through the preliminary hearing.

These amendments were developed following the Committee's extensive review of correspondence and inquiries received from several individuals concerning a Delaware County case in which a police officer was shot and killed during a routine traffic stop. The defendant had a criminal record and was on parole, and was released on $1,000/10% bail in a prior weapons case because the magisterial district judge setting the bail was not provided with the defendant's criminal history nor did the magisterial district judge have any other access to the defendant's criminal history.

The Committee considered several suggested solutions to this problem, such as a modification of the complaint form providing a check off box for the police to indicate that they had done a criminal history check and had provided/would provide the information to the magisterial district judge. The Committee also explored the possibility of requiring the bail authority to complete a form indicating the release criteria considered in determining the type of release under Rule 523. After considering the merits of these options, however, the Committee agreed that simply requiring a box be checked or the completion of a form would not resolve the problem. Rather, we agreed these approaches would be more of a superficial "quick-fix," and feared the result would appear to be a knee-jerk reaction to the Delaware County case rather than a solution to the real problem—the systemic problem concerning magisterial district judges' access to a defendant's criminal history when setting bail. Ordinarily, at the preliminary arraignment when bail is to be determined, the magisterial district judge does not have access to criminal history and only has the information that is available from the police officer or if the magisterial district judge knows the individual. The result is the magisterial district judge sets bail either too high or, as in the Delaware County case, too low given the actual circumstances. In view of these considerations, the Committee concluded a reasonable solution would be for the magisterial district judges to have the authority to modify bail at any time up to the preliminary hearing once information that could affect the defendant's bail status becomes known to the issuing authority.

The Committee reviewed the history of Rule 529. When the rule originally was adopted it provided, "Bail may be modified by the issuing authority at the preliminary hearing when counsel for either party makes known to him facts relating to the standards set forth in Rule 4004[2] which were not known or which were misrepresented when bail was originally set, or which have changed since the setting of bail."[3] However, the Committee history revealed that despite the literal wording of the rule, magisterial district judges would occasionally reset bail at a time before the preliminary hearing. Furthermore, at least in some judicial districts, the district attorneys would closely monitor the practice because of the concerns of "magisterial district judge shopping" and that the "non-sanctioned practice" provided a means for collusion between a bondsman and a magisterial district judge or for a bondsman to obtain a bail reduction unbeknownst to a defendant and charge a premium based on the higher bail amount.

In 1983, paragraph (A) of Rule 4005 (present Rule 529) was amended to address concerns about magisterial district judges modifying bail before the preliminary hearing. See the Committee Explanatory Report 13 Pa.B. 125 (January 8, 1983). The Committee had considered permitting magisterial district judges to modify bail without imposing any limitations, but rejected the idea because of potential problems, including concerns that ex parte proceedings would result unless a notice and hearing requirement was included, an unsatisfactory option in view of the necessary delay that would result from serving notice and scheduling a hearing. The Committee at that time considered:

(1) the parties should be aware of any bail modification request;

(2) the defendant's attorney and the attorney for the Commonwealth often agree that bail should be reduced and then request the court to sign an order, and in these instances, the notice and hearing requirements would be unnecessary, and would reduce the amount of time the defendant is detained;

(3) there are instances when issuing authorities set inappropriate or excessive bail at preliminary arraignment with the result that the defendant frequently remains in jail until the preliminary hearing, especially in those cases in which the defendant is not represented by counsel; and

(4) there are times when the defendant is under the auspices of the bail agency, and the bail agencies are often precluded by local rules or practice from requesting a bail reduction before the court of common pleas, and the defendant would have to wait until the preliminary hearing to have bail reset.

Accordingly, the Committee agreed to include the consent requirement to allow an issuing authority to modify bail following the preliminary arraignment and before the preliminary hearing upon request of the defendant with the consent of the attorney for the Commonwealth. The consent requirement also was intended to address the magisterial district judge shopping and collusion concerns, apprise the defendant and the attorney for the Commonwealth of any bail-related changes in the case, and avoid the delay incurred in waiting for a modification hearing to be scheduled.

Notwithstanding the considerations of the Committee in developing the 1983 proposal, on reflection, in view of the serious issues arising due to lack of access to relevant bail-related information, the Committee noted there are legitimate reasons why an issuing authority should be able to modify bail between the preliminary arraignment and preliminary hearing. For example, there often are cases in which a defendant, who would be considered "a good bail risk," has a high bail set because of the lack of adequate information about the defendant, or a "duty" magistrate who is not familiar with the defendant sets a high bail and the "proper" issuing authority who knows the defendant would have set a lower bail. In these situations, the present "defendant request/Commonwealth consent" requirement is an inadequate provision for allowing the issuing authority to modify the amount of bail because it results in unnecessary detention until 1) the defendant makes the request to modify bail and the attorney for the Commonwealth gives consent, 2) a

[2] Rule 4004 was renumbered as Rule 525 on March 1, 2000, effective April 1, 2001.

[3] The Committee also reviewed statutes and rules in other jurisdictions to find out whether they address similar procedures in their criminal procedures. We found that some jurisdictions allow the court sua sponte to modify bail, see, e.g., Arizona Rule of Criminal Procedure 7.4(b) and Ohio Rule of Criminal Procedure 46(E), but that most jurisdictions require a motion by the defendant or prosecuting attorney, see, e.g., Connecticut Rule of Criminal Procedures 38-14 and New Jersey Rule of Criminal Procedure 46.1(b)(2).

motion is heard in the court of common pleas, or 3) the time of the preliminary hearing.[4]

In view of the rule's history, the procedures in other jurisdictions that permit their courts to modify bail "on their own motion," the problems concerning the lack of authorization for the issuing authorities to modify bail, and the Committee's position that the issuing authorities should be able to modify bail during the time period between the preliminary arraignment and the preliminary hearing, the Committee proposed the amendment of Rule 529.

DISCUSSION

Having agreed to change Rule 529 to permit an issuing authority to modify a bail order at anytime following the preliminary arraignment and before the preliminary hearing, the problem was how effectively to incorporate the new procedure into Rule 529.

First, to emphasize the changes, the provision for the modification of bail during the time period subsequent to the preliminary arraignment and prior to the preliminary hearing is set forth in a separate section. New paragraph (A) highlights the new procedure by only addressing the issue of permitting the issuing authority to modify bail prior to the preliminary hearing.

The Committee initially considered including in the proposal an "additional information" requirement—that is, the issuing authority could modify the bail when in receipt of additional information about the defendant that would affect the defendant's bail status. We also noted that there are a variety of ways in which the additional information could be made known to the issuing authority: from the Commonwealth, the defense attorney, a third party, the court system, other judges, or other people in the system, electronically, or from the newspapers. Upon reconsideration, however, the Committee agreed that the issuing authority should be able to modify bail up or down, and be able to do this without the requirement of the receipt of additional information, such as when bail is originally set by a "duty" or "on-call" issuing authority who does not know the defendant and the "proper issuing authority," when he or she later becomes aware of the case, concludes the bail should be modified.

The amendments also include the requirement of notice to the defendant[5] and the attorney for the Commonwealth, with the opportunity for them to be heard. In this way, a formal motion procedure is not required, but the opportunity allows the defendant or attorney for the Commonwealth who opposes the change to "state his or her reasons." Thus, under this new procedure, the defendant, or the attorney for the Commonwealth, or even the issuing authority can initiate consideration of pre-preliminary hearing modification of bail, as long as there is notice to the other parties, and an opportunity for them to be heard. The specific consent requirement is deleted as no longer necessary, because paragraph (A), with the notice and opportunity to be heard provisions, encompasses the consent situation.

In view of these considerations, the following language is added as a new paragraph (A) in Rule 529:

> The issuing authority who is the magisterial district judge who was elected or assigned to preside over the jurisdiction where the crime occurred, upon request of the defendant or the attorney for the Commonwealth, or by the issuing authority sua sponte, and after notice to the defendant and the attorney for the Commonwealth and an opportunity to be heard, may modify a bail order at anytime before the preliminary hearing.[6]

A new paragraph is added to the Comment that further explains that the new procedures change existing practice by permitting the issuing authority to modify bail before the preliminary hearing upon the issuing authority's "own motion" or the request of one of the parties.

New paragraph (B) maintains, as a separate paragraph, the present paragraph (A) provision that a bail order may be modified by the issuing authority at the preliminary hearing. However, the requirement that modification occur "upon the request of either party" is deleted because it is no longer necessary—the issuing authority has the authority to modify bail without the request being made by a party.

Correlative amendments have been made to Rule 1011 to conform the cross-reference to Rule 529(B), (C), and (D) with new paragraphing being made under these amendments.[7] Similarly, corresponding amendments have been made to 543(C)(2) by deleting the reference to subparagraph (A) of Rule 529.

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[4] The Committee also considered that there may be equally important and compelling reasons the issuing authority would want to increase the amount of bail.

[5] We did not add a requirement for the attorney for the defendant to receive notice because frequently at this early stage of the proceedings, the defendant does not have counsel.

[6] This new language includes the new provision defining the "proper" issuing authority.

[7] The cross-reference to Pa.R.A.P. 1762 in the Comment to Rule 529 has been updated to reflect recent amendments to Rule 1762.

SUPREME COURT

The Act of June 29, 2002 (P. L. 663, No. 100), The Right-to-Know Law; No. 229; Magisterial Doc. No. 1

Order

Per Curiam

And Now, this 16th day of May, 2006, the order of December 12, 2002, directing that proceedings pursuant to Section 4(b) of the Act of June 29, 2002 (P. L. 663, No. 100), 65 P. S. § 66.4(b), are assigned to and shall be commenced in the courts of common pleas, is hereby made permanent.

[Pa.B. Doc. No. 06-971. Filed for public inspection June 2, 2006, 9:00 a.m.]