

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

**ORDER AMENDING RULE 46
OF THE COURT OF COMMON PLEAS
RULES OF CRIMINAL PROCEDURE**

This 17th day of September 2009, IT IS ORDERED that:

- 1) Court of Common Pleas Civil Rule 46 is amended by deleting the material in brackets and including the material underlined, as follows:

Rule 46. Release from Custody.

(a) *Release Prior to Trial.* Eligibility for release prior to trial shall be in accordance with 11 *Del.C.*, c. 21.

(b) *Release During Trial.* A person released before trial shall continue on release during trial under the same terms and conditions as were previously imposed unless the Court determines that other terms and conditions or termination of release are necessary to assure such person's presence during the trial or to assure that such person's conduct will not obstruct the orderly and expeditious progress of the trial.

(c) *Pending Sentence and Notice of Appeal.* Eligibility for release pending sentence shall be in accordance with 11 *Del.C.* § 4331(a). Eligibility for release pending notice of appeal or expiration of the time allowed for filing notice of appeal shall be in accordance with 11 *Del.C.* § 4502. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

(d) *Sureties.*

(1) *Justification.* Every surety, except a corporate surety, which is approved as provided by law, shall justify by affidavit and may be required to describe in the affidavit the property by which the surety proposes to justify and encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by the surety and remaining undischarged and all the other liabilities of the surety. No bond shall be approved unless the surety thereon appears to be qualified.

(2) *Attorneys and Other Officers.* The Clerk and the Court shall comply with the prohibition of Supreme Court rule 83 against attorneys or other court officers acting as surety.

(3) Corporate sureties.

(A) Every surety company duly authorized to do business in the State of Delaware may become surety on any bond required to be filed in this Court, provided that the company is registered with the Court and has a current Certificate of Authority issued by the Office of the Insurance Commissioner of the State of Delaware, evidencing such right, and such certificate is filed with the Clerk. Such corporate surety companies shall file with the Clerk a duly authenticated power of attorney appointing the agents or officers executing such obligation to act on behalf of the corporate surety. If an agent or officer so appointed is removed, resigns, dies or becomes disabled, the corporate surety shall notify the Court in writing. Agents or officers may not solicit business in any court, lock-up or other place of detention, nor pay a fee or give or promise anything of value to any court employee in order to secure a bail bond to facilitate a settlement, compromise, remission or reduction of the amount of any bail bond or the forfeiture thereof.

(B) Upon violation of this rule, the Court may suspend the corporate surety from posting further bonds in the Court and notify the Office of the Insurance Commissioner of the State of Delaware, of such violation.

(e) *Forfeiture.* (1) Declaration. If there is a breach of condition of a bond, the Court shall declare a forfeiture of the bail.

(2)(i) Enforcement. Once the Court has declared a forfeiture pursuant to subparagraph (1) of paragraph (e) this Rule, in whole or in part, the criminal clerk shall give written notice of the forfeiture to the address of record to the defendant and the surety if a qualified certified bonds person approved by the Court has posted the secured or cash bond.

(ii) The surety may, upon written motion to the Court with notice to the State, move to have the forfeiture set aside after a hearing setting forth good cause exists in the record why the defendant has failed to appear for the court proceeding.

(iii) If good cause exists, at the motion hearing the Court may set aside the forfeiture, in whole or in part, and/or return the cash or secured bond to the surety.

(3) [(2)] Setting Aside. Alternatively, the Court may direct without a formal motion by the surety that a forfeiture be set aside in whole or in part, upon such conditions as the Court may impose, if a person released upon execution of an appearance bond with a surety is subsequently surrendered by the surety into custody or if it otherwise appears that justice does not require the forfeiture. At that time, the Court may set aside the forfeiture, in whole or in part, as justice may require. If good cause does not exist in the record, the forfeiture shall not be reopened by the Court.

[(3) Enforcement. When a forfeiture has not been set aside, the Court shall on motion enter a judgment of default and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the Court and irrevocably appoint the Clerk as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion

without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk, who shall forthwith mail copies to the obligors to their last known addresses.]

[(4) Remission. After entry of such judgment, the Court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.]

(4) If the defendant fails to appear after written notice by summons for trial, or any other proceeding for which the bail was posted and the defendant posted bond, cash or secured, without surety, the bond may be immediately forfeited by the Court for failure to appear without motion or notice.

(i) The forfeiture may only be reopened by the defendant by filing a motion on the criminal motion calendar with due notice to the State setting forth in the record good cause for the defendant's failure to appear for the court proceeding. The Court, upon good cause shown by the defendant, may then set aside the forfeiture of defendant's cash or secured bond.

(5) [(f)] Exoneration. When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the Court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

(6) [(g)] Supervision of Detention Pending Trial. The Court shall exercise supervision over the detention of defendants and witnesses within the county pending trial for the purpose of eliminating all unnecessary detention. The Attorney General shall make a report when requested by the Court as to defendants and witnesses who have been held in custody pending indictment, arraignment or trial of the reasons why such a witness should not be released with or without the taking of a deposition pursuant to Rule 15(a) and why the defendant is still held in custody.

(7) [(h)] Forfeiture of Property. Nothing in this rule shall prevent the Court from disposing of any charge by entering an order directing forfeiture of property if the value of the property is an amount that would be an appropriate sentence after conviction of the offense charged and if such forfeiture is authorized by statute.

(8) [(i)] Modification for Delay. If there is unnecessary delay in filing an information against a defendant who has been held in default of bail to answer in this Court, or if there is unnecessary delay in bringing a defendant to trial, the Court may modify the terms for release on bail.

2) This effective date of this amendment is November 3, 2009.

Alex J. Smalls
Chief Judge

William C. Bradley, Jr.
Judge

John K. Welch
Judge

Rosemary Betts Beauregard
Judge

Kenneth S. Clark, Jr.
Judge

Charles W. Welch, III
Judge

Joseph F. Flickinger, III
Judge

Andrea L. Rocanelli
Judge

Anne Hartnett Reigle
Judge