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 **[court]** 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.

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.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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

Final Report explaining the August 24, 2004 Comment revision published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

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. (, 2006).

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.

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.**

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

Final Report explaining the August 24, 2004 changes concerning the procedures when a defendant fails to appear published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the December 30, 2005 changes adding references to bench warrants published with the Court's Order at 35 Pa.B. 184 (January 14, 2006).

Final Report explaining the March 9, 2006 amendments adding new paragraphs (E) and (F) published with the Court's Order at 36 Pa.B. 1385 (March 25, 2006).

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

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)**, **[(C)](D), and [(D)]** **(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.

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.**

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COMMITTEE EXPLANATORY REPORTS:

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

Final Report explaining the February 21, 1996 amendments published with the Court's Order at 26 Pa.B. 991 (March 9, 1996).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (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. (, 2006).