

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III
JUDGE**

January 4, 2011

Mr. Jason "Guido" Leone
Sharky's Bail Bonds
424 S. State Street
Dover, DE 19901

RE: State of Delaware v. Lorina D. Rholetter
Case No.: 1008014381
Cr. A. Nos.: K10-08-1041 (Shoplifting < \$1500)
K10-08-1042 (Possession Drug Paraphernalia)
K10-08-1043 (Conspiracy 3rd)

Decision on Surety's Motion for Exoneration From Bail Obligation

Dear Mr. Leone:

I am in receipt of your correspondence for the above-referenced matter that was filed with the court on December 1, 2010. I consider your correspondence a Motion for Exoneration From Bail Obligation for this matter pursuant to Court of Common Pleas Criminal Rule 46(e)(5). After careful consideration of your motion, please be advised that it is denied.

"[A] bail bond is a contract between the government, on one side, and the defendant and his surety on the other. The burden is on the surety, not the state, to make a full inquiry and to obtain all of the necessary facts before signing a bail bond." *State v. Miller*, 2003 WL 359741, at *2 (Del. Super. Ct.). When someone posts bail as a surety for a defendant, he does so in order to assure the court that the defendant will be present for his or her next court appearance. The person posting the bail becomes responsible for the appearance of the defendant as he knows that he will lose the money or property that

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he has posted should the defendant fail to appear. If the defendant fails to appear, the surety loses the bail that he posted through bond forfeiture.

In the Court of Common Pleas, a surety's motion to be exonerated from his obligation to produce bail is governed by Court of Common Pleas Criminal Rule 46(e)(5). This rule provides as follows:

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.

As you know, you posted a bail bond for the defendant for the above-referenced charges in August of 2010. As a result of your posting of this bond, the defendant was not incarcerated. The defendant then failed to appear for her arraignment with our court on this matter, which was scheduled for September 29, 2010, and, to date, has failed to appear to have her capias cleared. In your correspondence that was filed with the court on December 1, 2010, you request that you be relieved as the obligor for the bail of the defendant in this matter as she is incarcerated in Caroline County, Maryland.

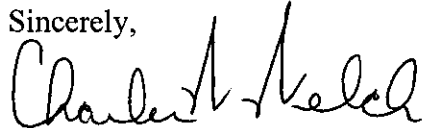
Pursuant to Court of Common Pleas Criminal Rule 46(e)(5), you, as a surety, can only be relieved as the obligor for the defendant's bail if (1) all conditions of bond have been satisfied; (2) any forfeiture of the bond has been set aside or remitted; (3) you have deposited cash in the amount of the bond; or (4) there has been the timely surrender of the defendant into custody. To date, none of these conditions have been satisfied. The conditions of bond have not been satisfied since the defendant has failed to appear for her arraignment and she has not been surrendered into custody. Additionally, to date, there has been no forfeiture of the bond that has been set aside or remitted and you have not deposited cash with the court in the amount of bond. Given these facts, you are not

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entitled to be relieved from your obligations under the bail bond for the defendant. As such, your motion is denied.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch". The signature is written in a cursive style with a large, prominent initial "C".

Charles W. Welch

CWW:mek