

**ADMINISTRATIVE DIRECTIVE
OF THE
PRESIDENT JUDGE OF THE SUPERIOR COURT
OF THE STATE OF DELAWARE**

NO. 2005-3

**ADMINISTRATIVE PROCEDURES FOR
RELEASE FROM CUSTODY**

This 12th day of September, 2005, **IT IS HEREBY DIRECTED** that the following administrative procedures shall govern the release of defendants from custody in criminal cases:

- (a) *Release prior to trial.* Eligibility for release prior to trial shall be in accordance with 11 *Del. C.*, Chapter 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 surety required by law to hold a current Certification of Authority issued by the Office of the Insurance Commissioner of the State of Delaware, shall justify by affidavit and may be required to describe in the affidavit the property by which the surety proposes to secure his/her obligation and all encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by the surety

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and remaining undischarged and all the other liabilities of the surety. No bond shall be approved unless the surety thereon appears to be qualified. Unless otherwise ordered by the Court, any bond approved pursuant to this subsection shall be secured by a civil judgment or mortgage upon the property pledged for the bond.

- (2) Attorneys and other officers. The Prothonotaries and the Court shall comply with Supreme Court Rule 83 which prohibits attorneys or court officers from acting as surety.
- (3) Sureties required to hold a Certification of Authority. Subject to paragraph (4), every surety 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 Certification of Authority issued by the Office of the Insurance Commissioner of the State of Delaware evidencing such right. Such Certification of Authority shall be filed with the Prothonotary in each county in which the surety does business. Such surety shall also file with the Prothonotary in each county in which the surety does business a duly authenticated power of attorney appointing the agents or officers executing such obligation to act on behalf of the surety. If an agent or officer so appointed is removed, resigns, dies or becomes disabled, the 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. Upon violation of this rule, the Court may suspend the surety from posting further bonds in the Court and notify the Office of the Insurance Commissioner of the State of Delaware of such violation.
- (4) President Judge's Approval. No individual, corporation, or other entity, or their agents or officers, shall engage in the business of acting as surety on any bail bond submitted to the Court unless such individual, corporation or other entity, and their agents or officers, have been approved by the President Judge. Such approval may be granted, denied or revoked by the President Judge, in his/her discretion, for such cause as he/she deems appropriate. A list of approved sureties shall be maintained in the Office of the Prothonotary in each county.

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- (e) *Forfeiture.*
 - (1) Declaration. If there is a breach of condition of a bond, the Court shall declare a forfeiture of the bail.
 - (2) Setting aside. The Court may direct 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 appearance bond with surety is subsequently surrendered by the surety into custody or if it otherwise appears that justice does not require the forfeiture.
 - (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 Prothonotary 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 Prothonotary, 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.
- (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.
- (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.
- (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

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property is an amount that would be an appropriate sentence after conviction of the offense charged and if such forfeiture is authorized by statute.

- (i) *Modification for delay.* If there is unnecessary delay in filing an indictment or, where appropriate, 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.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotaries
cc: Superior Court Judges
Superior Court Commissioners
Hon. M. Jane Brady
Hon. Lawrence M. Sullivan
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