

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

JAMES T. VAUGHN, JR.
PRESIDENT JUDGE

KENT COUNTY COURT HOUSE
38 THE GREEN
DOVER, DELAWARE 19901

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

NO. 2012-4

**ADMINISTRATIVE PROCEDURES FOR
RELEASE FROM CUSTODY**

This 25th day of September, 2012.

WHEREAS, the Court established Administrative Procedures for Release from Custody by Administrative Directive 2005-3.

WHEREAS, the Court after a review of these procedures and current practice, believes that modification to the current procedures and inclusion of the Code of Conduct in this Administrative Directive is necessary to provide a clear understanding of the Court's requirements, expectations and potential consequences upon failure to adhere to these procedures.

NOW, THEREFORE, IT IS DIRECTED that Administrative Directive No. 2005-3 is rescinded and replaced in the entirety, as follows:

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. Super. Ct. Cr. R. 46(a).
- (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

**ADMINISTRATIVE DIRECTIVE NO. 2012-4
PROCEDURES FOR RELEASE FROM CUSTODY
SEPTEMBER 25, 2012**

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. Super. Ct. Cr. R. 46(b).

(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. Super. Ct. Cr. R. 46(c).

(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 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. Super. Ct. Cr. R. 46(d)(1).

(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. Super. Ct. Cr. R. 46(d)(2).

(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

**ADMINISTRATIVE DIRECTIVE NO. 2012-4
PROCEDURES FOR RELEASE FROM CUSTODY
SEPTEMBER 25, 2012**

the Court in each county and has a current Certification of Authority issued by Delaware Department of Insurance. 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 bail agent¹ or officers executing such obligation to act on behalf of the surety. If a bail agent or officer so appointed is removed, resigns, dies or becomes disabled, the surety shall notify the Court in writing. Bail 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.

18 *Del. C.* § 4332(p), 18 *Del. C.* § 4351.

- (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, employees 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. 18 *Del. C.* § 4345.

(e) *Forfeiture.*

- (1) Declaration. If there is a breach of condition of a bond, the Court shall declare a forfeiture of the bail. Super. Ct. Cr. R. 46(e)(1).

¹ For purposes of this Administrative Directive, bail agent shall have the meaning ascribed to it in 18 *Del. C.* § 4332(a) and shall also include nonresident bail agent, as defined in 18 *Del. C.* § 4332(j) and property bail agents, as defined in 18 *Del. C.* § 4332(l).

ADMINISTRATIVE DIRECTIVE NO. 2012-4
PROCEDURES FOR RELEASE FROM CUSTODY
SEPTEMBER 25, 2012

- (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. Super. Ct. Cr. R. 46(e)(2).

- (3) Enforcement. When a forfeiture has not been set aside, the Court shall, on its own or other 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, judgment and such notice of the motion as the Court prescribes may be served on the Prothonotary, who shall forthwith cause copies to be delivered in a manner which is customary between the court and the corporate surety, bail agent, bail bondsman, bail bond agent or designated bail agent, or by first class mail to the corporate surety, bail agent or designated bail agent or other obligors to their last known address. Super. Ct. Cr. R. 46(e)(3).
 - (A) Upon the entry of a Judge's Order of Forfeiture the amount forfeited and due to the Court shall be payable within 10 business days. If a Commissioner enters an Order of Forfeiture the amount forfeited and due to the Court shall be payable within 10 business days unless pursuant to Superior Court Criminal Rule 62(a)(4) a party files and serves written objections to the Commissioner's Order and a Judge enters a stay of execution of the Commissioner's Forfeiture Order. If the surety fails to pay the full forfeiture amount within 10 business days from the date of the Court's Order, the surety will be removed from the Bail Registry and its bail agents, business entity and designated bail agents authorized to transact its bail bond business in the Delaware Superior Court will have no further authority to act for it, and their names, as acting for the insurer, will be removed from the Bail Registry. In addition, those who

ADMINISTRATIVE DIRECTIVE NO. 2012-4
PROCEDURES FOR RELEASE FROM CUSTODY
SEPTEMBER 25, 2012

acted in such capacity with respect to the forfeited bond will be precluded, by removal from the Bail Registry, from so acting for any other insurer until the judgment has been satisfied. Bail bonds from the insurer, corporate surety, business entity, bail agent, or designated bail agent shall not be accepted during the period that they are removed from the Bail Registry. The Prothonotary's Office shall forward a copy of the Order of Judgment to the Department of Insurance with a cover letter requesting that the Department of Insurance take steps to obtain payment on the judgment without the necessity of executing on the judgment. 18 *Del. C.* § 4345.

- (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. Super. Ct. Cr. R. 46(e)(4).
- (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. Super. Ct. Cr. R. 46(f).
- (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. Super. Ct. Cr. R. 46(g).
- (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

**ADMINISTRATIVE DIRECTIVE NO. 2012-4
PROCEDURES FOR RELEASE FROM CUSTODY
SEPTEMBER 25, 2012**

forfeiture is authorized by statute. Super. Ct. Cr. R. 46(h).

- (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. Super. Ct. Cr. R. 46(i).
- (j) Annual Registration of Surety Companies, Agents, and/or Designated Bail Agents and Notification Requirements.
 - (1) Each corporate surety company, business entity, bail agent and designated bail agent must complete the registration form (Exhibit A) and submit the completed registration form with the required attachments to the Prothonotary's Office in each county in which bond should be filed by December 15th of each year in order to do business beginning on January 1st of the following year in the Superior Court for that county. Any registration or documentation received after December 15th will be reviewed at the convenience of the Court.
 - (2) Each corporate surety company, business entity, bail agent and designated bail agent must notify each Prothonotary's Office in which it has registered if there is any change to the information provided in the registration form or its attachments within 10 days of such change.
 - (3) Any person acting in the capacity of a corporate surety agent or performing any of the functions, duties, or powers prescribed for a corporate surety agent shall be qualified, licensed, and appointed as required by the Delaware Department of Insurance pursuant to 18 *Del. C. c. 17*.
 - (4) For the purpose of Bail Registration, a bail agent shall not concurrently be employed or licensed by more than one bail agent or bail agent business entity. 18 *Del. C. § 4344(a)*.
 - (5) Within 15 business days of the date a bail agent's employment or

**ADMINISTRATIVE DIRECTIVE NO. 2012-4
PROCEDURES FOR RELEASE FROM CUSTODY
SEPTEMBER 25, 2012**

representation of a corporate surety is terminated, both the corporate surety and the bail agent, or designated bail agent terminated have the responsibility to notify, in writing, the Prothonotary's Office in each county where they are registered of such termination.

- (6) Within 3 business days of the date a bail agent or representative of a corporate surety is convicted of, pleads guilty to, or pleads no contest to a felony, that bail agent or representative must notify, in writing, the Prothonotary's Office in each county where the bail agent or representative has registered of such conviction or plea.
- (k) Conduct of Surety Companies, Bail Agent Business Entities, Bail Agents and/or Designated Bail Agents.
- (1) Every corporate surety company, bail agent business entity, bail agent, designated bail agent and employee representing a corporate surety or a bail agent business entity shall at all times conduct themselves in a professional, courteous and respectful manner when appearing before or interacting with any judge, commissioner or court employee.
 - (2) Every corporate surety company, bail agent business entity, bail agent, or designated bail agent shall obey the laws of the State of Delaware and be of good moral character.
 - (3) No corporate surety shall adopt or use a trade name that is similar to a trade name used and registered by another corporate surety executing bail bonds for any court in the State of Delaware. *See 6 Del. C. §§ 3101 and 3104, and 18 Del. C. § 2304(2), (9).*
 - (4) No corporate surety, bail agent business entity, bail agent, designated bail agent or employee of a corporate surety or of a bail agent business entity may directly or indirectly solicit business in or on the property or grounds of any courthouse. The term "solicit" for the purpose of this Administrative Directive shall include the distribution of business cards, printed

**ADMINISTRATIVE DIRECTIVE NO. 2012-4
PROCEDURES FOR RELEASE FROM CUSTODY
SEPTEMBER 25, 2012**

advertisements, including the wearing of printed apparel associated with the bail business, or other written information directed to a prisoner or any other party, unless the request for information is initiated by the prisoner or other party.

18 Del. C. § 4350 (a)(2).

- (5) No corporate surety, bail agent business entity, bail agent, designated bail agent or employee of a corporate surety or of a bail agent business entity may pay a fee or rebate or give or promise anything of value to any court employee in order to secure a bail bond or to attempt to secure or facilitate a settlement, compromise, remission or reduction of the amount of any bail bond or the forfeiture thereof.

18 Del. C. § 4350 (a)(3).

- (1) Conduct Which May Warrant Denial, Suspension or Revocation of the Ability to Conduct Business with the Superior Court.

- (1) A pending felony charge in the Superior Court.

- (2) Any felony conviction.²

- (3) Any outstanding capias.

- (4) The revocation or suspension of any license by the Delaware Department of Insurance.

- (5) The revocation or suspension of bail posting privileges by any Delaware Court.

- (6) The failure to pay a Court ordered bail forfeiture with 30 days of notice.

- (7) The failure to follow any Court order.

² If a felony conviction has been pardoned, a copy of the pardon should be submitted with the registration for the Court's consideration.

ADMINISTRATIVE DIRECTIVE NO. 2012-4
PROCEDURES FOR RELEASE FROM CUSTODY
SEPTEMBER 25, 2012

- (8) The failure to pay any Court ordered cost, fine, restitution or other charge.
- (9) The solicitation of bail bond business in or on the property or grounds of any courthouse.
- (10) Providing advice about a particular attorney or suggesting the employment of a particular attorney to represent a defendant.
- (11) The payment of a fee or the promise of anything of value to a Court employee related to the bail bond business.
- (12) The failure to truthfully complete the Superior Court's bail bond registration packet.
- (13) The failure to notify the Court of a change in the information provided in the bail bond registration packet within 10 days of such change, including but not limited to a change of corporate surety company, physical location of office, days and hours that office is open, mailing address and employees.
18 Del. C. § 4346.
- (14) The failure to conduct themselves professionally, courteously, and respectfully when appearing before or interacting with any judge, commissioner or court employee.
- (15) The failure to obey any federal, state, county or municipal law, regulation or ordinance, including but not limited to the payment of taxes, employment insurance and workers' compensation.
- (16) The confirmation of a complaint from a citizen regarding the timely processing of any bail transaction.
- (17) The posting of a bond or bonds which exceed the aggregate liability limit of the bail agent's surety bond, assignment or

**ADMINISTRATIVE DIRECTIVE NO. 2012-4
PROCEDURES FOR RELEASE FROM CUSTODY
SEPTEMBER 25, 2012**

posting of cash, negotiable securities, irrevocable letter of credit or other similar instrument, whichever is applicable.
18 *Del. C.* § 4336(b)(3), (c).

- (18) The failure to adhere to the proper premium rate on execution of a bail bond as defined by 18 *Del. C.* c. 25.
18 *Del. C.* § 4347.
- (19) The failure to comply with all licensing requirements and all other obligations as set forth by the Department of Insurance. The failure to notify the Court within 10 days of any extension granted by the Department of Insurance related to the satisfaction of licensing requirements.
- (20) The failure to cooperate fully with any investigation.
- (21) Any other conduct, behavior or situation that the President Judge deems to warrant denial, suspension or revocation.
18 *Del. C.* § 4345.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotaries
cc: Superior Court Judges
Superior Court Commissioners
Hon. Joseph R. Biden, III
Hon. J. Brendan O'Neill
Court Administrator
Case Scheduling Offices
Investigative Services Offices
Law Libraries
Margaret Derrickson
File

Exhibit A

SECTION II - COMPLETE IF APPLICABLE

GUARANTOR TO SATISFY BAIL FORFEITURE JUDGMENTS FOR ABOVE LISTED BAIL AGENT/BUSINESS ENTITY/DESIGNATED BAIL AGENT:

The person or entity listed below has provided the bail agent/business entity and/or insurance/surety company with a guarantee to pay bail forfeiture judgments associated with bail recognizance written by the bail agent/business entity/designated bail agent listed in SECTION I:

Name: _____

Delaware Department of Insurance

License #: _____ Exp. Date: _____

Address: _____
Street City State Zip Code

Telephone: _____
Area Code Number

(ATTACH A COPY OF THE GUARANTOR'S LICENSE)

CERTIFICATION BY INSURANCE/SURETY COMPANY:

I certify that the insurance/surety company listed in SECTION I is authorized and admitted to transact surety business by the Delaware Department of Insurance. The above named bail agent/business entity/ designated bail agent is authorized to write bail bonds on behalf of that insurance company in Delaware and is licensed as an insurance producer by the Delaware Department of Insurance. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment. I understand it is my obligation to update the information contained herein as changes occur in order to assure that the information remains complete and accurate.

Dated: _____

Signature of Corporate Officer

Title

Print Name

Mail or hand deliver the original registration form along with the original power of attorney and other required attachments to each Prothonotary's Office in each county in which you intend to conduct business:

- New Castle County Courthouse, 500 N. King Street, Suite 500, Wilmington, DE 19801
- Kent County Courthouse, 38 The Green, Dover, DE 19901
- Sussex County Courthouse, 1 The Circle, Suite 2, Georgetown, DE 19947