



## FAMILY COURT OF THE STATE OF DELAWARE

CHANDLEE JOHNSON KUHN  
CHIEF JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 N. KING STREET, SUITE 9445  
WILMINGTON, DELAWARE 19801-3736

### **POLICY MEMORANDUM REGARDING BAIL BONDS**

This Policy Memorandum sets forth the laws, rules, procedures and court policy related to the posting of bond by individuals or companies providing secured appearance bonds on behalf of defendants or respondents in the Family Court of the State of Delaware. The following procedures shall govern the release of persons on bail:

- (a) *Right to bail.* A person charged shall be admitted to bail either before conviction or after conviction and pending appeal in accordance with the Constitution and laws of this State. If there is unnecessary delay in bringing a person charged to trial, the Court may modify the terms for release on bail. Family Ct. Cr. R. 46(a).
- (b) *Bail for witness.* If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure that person's presence by subpoena, the Court or the committing magistrate may require bail for that person's appearance as a witness, in an amount fixed by the Court or the committing magistrate. If the person fails to give bail, the Court or committing magistrate may commit that person to custody pending final disposition of the proceeding in which the testimony is needed, may order release if detention has been unreasonably long and may modify at any time the requirement as to bail. Family Ct. Cr. R. 46(b).
- (c) *Terms.* If the person charged is admitted to bail, the terms thereof shall be such as in the judgment of the Court will insure the presence of the person charged, having regard to the nature and circumstances of the offense charged, the weight of the evidence, the financial ability of the person charged to give bail, the character of the person charged and the policy against unnecessary detention of persons charged pending trial. Family Ct. Cr. R. 46(c).
- (d) *Form: Conditions and place of deposit.* A person required or permitted to give bail shall execute an appearance bond. The Court having regard to the considerations set forth in Family Court Criminal Rule 46(c) may require one or more sureties, may authorize the acceptance of cash or bonds or notes of the

United States or State of Delaware in an amount equal to or less than the face amount of the bond, or may authorize the release of the person charged without security upon that person's written agreement to appear at a specified time and place and upon such conditions as may be prescribed to insure appearance.

(e) *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 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. Family Ct. Cr. R. 46(e).
- (2) **Sureties required to hold a Certification of Authority.** Subject to paragraph (3), 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 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 Family Court Administrator. Such surety shall also file a duly authenticated power of attorney appointing the bail agent<sup>1</sup> 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.<sup>2</sup> 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(18), 18 *Del. C.* § 4351.
- (3) **Chief 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 Chief Judge. Such approval may be granted, denied or revoked by

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<sup>1</sup> For purposes of this Memorandum, 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).

<sup>2</sup> For purposes of this Memorandum, when notice is provided to the Court "in writing," the notice must contain an original signature.

the Chief 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 Family Court Administrator. 18 *Del. C.* § 4345.

(f) *Forfeiture.*

- (1) Declaration. If there is a breach of condition of a bond, the Court shall declare a forfeiture of the bail. Family Ct. Cr. R. 46(f)(1).
- (2) Setting aside. The Court may direct that a forfeiture be set aside, upon such conditions as the Court may impose, if it appears that justice does not require the enforcement of the forfeiture. Family Ct. Cr. R. 46(f)(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 Clerk of Court 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 of Court, who shall forthwith mail 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. Family Ct. Cr. R. 46(f)(3).

(A) Upon the entry of a Family Court Order of Forfeiture the amount forfeited and due to the Court shall be payable within 10 business days. 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 Family 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 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 Clerk of Court shall forward a copy of the Order of Judgment to the Department of Insurance 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. Family Ct. Cr. R. 46(f)(4).
- (g) *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. Family Ct. Cr. R. 46(g).
- (h) 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 Family Court Administrator by December 15<sup>th</sup> of each year in order to do business beginning on January 1<sup>st</sup> of the following year in the Family Court. Any registration or documentation received after December 15<sup>th</sup> will be reviewed at the convenience of the Court.
- (2) Each corporate surety company, business entity, bail agent and designated bail agent must notify the Court Administrator 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) A bail bond agent may be concurrently employed or licensed by a surety bail bond agent, and property bail agent or bail bond agent business entities. A bail bond agent shall not concurrently be employed or licensed by two surety bail bond agents, or two property bail bond agents or bail bond agent business entities. 18 *Del. C.* § 4344(a).
- (5) Within 15 business days of the date a bail agent's employment or 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 Family Court Administrator 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 Court Administrator of such conviction or plea.

- (i) 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 Memorandum shall include the distribution of business cards, printed 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).*
- (j) Conduct Which May Warrant Denial, Suspension or Revocation of the Ability to Conduct Business with the Family Court.
  - (1) A pending felony charge in any Delaware Court.
  - (2) Any felony conviction.<sup>3</sup>

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<sup>3</sup> If a felony conviction has been pardoned, a copy of the pardon should be submitted with the registration for the Court’s consideration.

- (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.
- (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 Family 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 posting of cash, negotiable securities, irrevocable letter of credit or other similar instrument, whichever is applicable.
- (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 Chief Judge deems to warrant denial, suspension or revocation. 18 *Del. C. § 4345.*

\_\_\_\_\_/s/\_\_\_\_\_  
Chandlee Johnson Kuhn, Chief Judge

\_\_\_\_12/3/13\_\_\_\_  
Date

cc: Family Court Judges  
Family Court Commissioners  
Hon. Joseph R. Biden, III  
Hon. Brendan O'Neil  
Family Court Administrator  
Administrative Office of the Courts  
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