

THE EIGHTH JUDICIAL CIRCUIT OF FLORIDA  
ADMINISTRATIVE ORDER NO. 4.06

**BAIL BOND ACTIONS**

**In order to provide** guidelines concerning bond forfeitures in accordance with Chapter 903, Florida Statutes,

**IT IS ORDERED:**

**A. Contract Actions**

1. Bail bonds are contracts. *Pinellas County v. Robertson*, 490 So. 2d 1041 (Fla. 2d DCA 1986). Contract law applies to the interpretation and enforcement of bail bonds. *United States v. Dudley*, 62 F.3d 1275 (10th Cir. 1995). Because actions on contracts are civil in nature, the Florida Rules of Civil Procedure apply to bail bond proceedings.

2. A corporation cannot represent itself in court without a licensed attorney. The filing of documents with a court on behalf of a party by a non-lawyer corporate representative constitutes the unauthorized practice of law. *Szteinbaum v. Kaes Inversiones y Valores*, 476 So. 2d 247 (Fla. 3d DCA 1985); *Nicholson Supply Co. v. First Federal Savings & Loan Ass'n*, 184 So. 2d 438 (Fla. 2d DCA 1966); § 454.23, Fla. Stat. **Any request for court action made on behalf of a corporation constitutes a representation, regardless of how the document is titled, and must be filed by an attorney who is licensed or otherwise permitted to practice law in the State of Florida.** However, if the surety or bond agent is a natural person and is individually liable on the bond, i.e., the forfeiture or judgment would be entered against the natural person in his or her individual capacity, then that natural person may proceed in court *pro se*. References in this order to “the surety” include corporate sureties, corporate bond agencies, individual sureties, individual bond agents and cash bond depositors, where applicable.

3. In all civil proceedings, the party seeking relief is responsible for taking any action needed in order to obtain the relief requested. When a request for relief on a bond forfeiture or exoneration issue is filed, it is the responsibility of the surety to present the proposed order to the court, and to take any other action needed in order to bring the matter before the appropriate judge, including obtaining consents, or setting a hearing if consents cannot be timely obtained.

4. When a pleading is presented to the court, and the matter is ready for *ex parte* action by the court, the court will enter a timely ruling. Pleadings include motions, petitions, applications, and all other writings which request action by the court.

5. Blanket bonds are prohibited. A blanket bond is a single bail bond that provides for release of a defendant in more than one case. Any judge setting or granting monetary bail shall set a separate and specific bail amount for each charge or offense. When bail is posted, each charge or offense requires a separate bond. § 903.02(4), Fla. Stat.

## **B. Transportation Expenses**

1. When proof of payment of transportation expenses is required in any proceeding under Chapter 903, Florida Statutes, the surety may provide such proof by filing an affidavit substantially similar in form to Exhibit “A” attached to this order, which form may be revised from time to time by the Administrative Judge of the Criminal Division of the Eighth Judicial Circuit.

2. A determination of whether transportation expenses are due for transports taking place within the Eighth Judicial Circuit is dependent on the type of proceeding involved and the statutory requirements for that proceeding. When the surety is required by statute to provide transportation to the “jurisdiction of the court” and the case is a circuit court case in the Eighth Judicial Circuit, the surety is not required to pay the costs of transporting the defendant between counties within the Eighth Judicial Circuit.

### **C. Exoneration**

1. When a defendant is in custody, the surety may apply for exoneration from the court by filing a pleading that includes a statement of the facts and legal argument in support of exoneration.

2. When the surety seeks exoneration for reasons set forth in section 903.21(3), Florida Statutes, the surety must provide to the court a written commitment that the surety will pay the cost of transporting the defendant to the detention center for the county where the case in which the bond is posted is pending, together with any other relevant documentation in support of exoneration which the surety wishes the court to consider. The surety must provide a copy of the proposed order to go the Sheriff's Office and include the Sheriff's Office on the certificate of service on the proposed order.

3. If the surety surrenders the defendant under section 903.21(1) and (2), Florida Statutes, and seeks exoneration, then the surety must attach to the pleading:

- (a) a certificate acknowledging the defendant's surrender from the official into whose custody the defendant would have been placed if committed, including the location and jurisdiction of the facility in which the defendant is incarcerated;
- (b) a copy of the bond from which exoneration is sought; and
- (c) a certification showing that notice was given to the state attorney at least three (3) days before the pleading and attachments were filed.

### **D. Discharge**

1. The surety may petition the court to discharge a forfeiture within sixty (60) days of the forfeiture only for the reasons enumerated in section 903.26(5), Florida Statutes. A petition to discharge a forfeiture does not toll the statutory 60-day time period before entry of a judgment. See *County Bonding v. State*, 724 So. 2d 131 (Fla. 3d DCA 1998) (forfeitures must be paid or a discharge order entered to prevent entry of judgment) and

*Frontier Ins. Co. v. State*, 760 So. 2d 299 (Fla. 3d DCA 2000) (court loses jurisdiction to discharge after sixty (60) days).

2. The Clerk of Court in any county of the Eighth Judicial Circuit where a criminal case is pending may discharge a forfeiture if the surety files in that county an affirmation from the Sheriff or chief correctional officer of that county stating that the defendant has been arrested and returned to the county where the case is pending, and that the costs incurred in returning the defendant to that county have been paid. § 903.26(8), Fla. Stat. The defendant must be incarcerated in that county, and the affirmation must be substantially similar in form to Exhibit “B” attached to this order, which form may be revised from time to time by the Administrative Judge of the Criminal Division.

3. When the State Attorney files a dismissal, *nolle prosequi*, or a no-information, the Clerk of Court is authorized to discharge a forfeiture on the dismissed case under section 903.26(8), Florida Statutes, until the time for filing for remission under section 903.28, Florida Statutes, has expired.

#### **E. Setting Aside Forfeiture**

1. The setting aside of a bond forfeiture is an equitable proceeding. When a forfeiture is set aside (as opposed to discharged), the parties are returned to pre-forfeiture status and the bond remains intact. See *Bush v. International Fidelity*, 834 So. 2d 212 (Fla. 4th DCA 2002), review denied, 847 So. 2d 976 (Fla. 2003); Fla. R. Civ. P. 1.540(b)(5).

2. Any party to the bond contract may petition the court to set aside a forfeiture within 60 days of the forfeiture. The petition to set aside forfeiture does not toll the statutory 60-day period for entry of a judgment provided in section 903.26(2)(a), Florida Statutes. See *Frontier v. State*, 760 So. 2d 299 (3d DCA 2000).

3. The foregoing procedures concerning the set aside of a bond forfeiture in connection with the quashing of a capias are discretionary. If for any reason the court does not simultaneously resolve the bond forfeiture in conjunction with the capias proceeding, any party

to the bond contract may address the bond forfeiture in later proceedings in accordance with the provisions of Chapter 903, Florida Statutes, and this administrative order.

#### **F. Cancellation**

1. A court must cancel a bond when no formal charges have been brought against a defendant within 365 days after arrest.

2. The following language shall be included on every judgment and sentence, probation order, order of community control, and judgment of acquittal in all felony, misdemeanor and criminal traffic cases:

If a bail bond is in effect and has not been forfeited, the bond is hereby canceled.

3. Bail bonds in effect and not forfeited in cases in which a dismissal, *nolle prosequi*, or no-information is entered are canceled by operation of law. § 903.31, Fla. Stat. The Clerk of Court will provide a copy of the dismissal order, the no-information notice, or the record entry of the *nolle prosequi*, upon payment of the statutory fee, to anyone requesting documentation showing that a bond was canceled by operation of law. If a certification of cancellation is attached to the original bond, the Clerk of Court shall furnish an executed certificate of cancellation to the surety without cost.

4. The court must order that a bond is canceled within ten (10) days of discharge or remission of a forfeiture. A bond may not be cancelled when a forfeiture is pending. § 903.31(1), Fla. Stat.

#### **G. Change in Charges**

When there is a change in the charges against a defendant, the surety may be relieved of its liability on a bond. See *Midland Insurance v. State*, 354 So. 2d 961 (Fla. 3d DCA 1978). If a surety believes that its obligation has been impaired for this reason, the surety may move to cancel or revoke the bond and have this issue heard by the court assigned to hear the case in which the bond was issued.

## **H. Expiration**

If a bond has not been forfeited, the original appearance bond expires thirty-six (36) months after the bond was posted.

## **I. Remission**

1. A surety may petition for remission only by following the procedures set forth in section 903.28, Florida Statutes. A petition for remission must be filed within two (2) years from the date of forfeiture. *Leach v. State*, 293 So. 2d 77 (Fla. 1st DCA 1974); *State f/u/b/o Dade County v. Romero*, 456 So. 2d 1281 (Fla. 3d DCA 1984). Forfeitures which have gone to judgment do not qualify for remission, unless the judgment has been set aside. *Accredited Surety & Casualty Co. v. State*, 418 So. 2d 378 (Fla. 5th DCA 1982).

2. A surety's petition for remission must include an affidavit setting forth the facts on which the application for remission is founded.

3. A surety's petition for remission based upon a claim of the surety's attempt(s) to procure or cause the apprehension or surrender of the defendant must prove the attempt(s) by further documentation or other evidence.

4. The surety must give the Clerk of Court and the State Attorney twenty (20) days notice before a hearing on a petition for remission, or before submission of a proposed order of remission to the court.

5. The surety must submit to the court proof that costs have been paid, unless the ground for remission is that there was no breach of the bond.

6. The court has discretion to direct remission of less than the full percentage authorized under section 903.28(2)-(6), Florida Statutes. *Accredited Surety v. Putnam County*, 528 So. 2d 430 (Fla. 5th DCA 1988). If the court does not direct remission of the full percentage authorized under the applicable subsection, the court must make findings supporting its decision.

**J. Post-Judgment Proceedings**

1. A petition to set aside a forfeiture judgment must be made within thirty-five (35) days from the date of forfeiture by following the procedures set forth in section 903.27(5), Florida Statutes. Other post-judgment pleadings may be filed as authorized by law.

2. The surety must pay the amount of the forfeiture judgment to the Clerk of Court before filing a motion to set aside a forfeiture judgment. The filing of the motion, together with the payment of the required escrow deposit, acts as an automatic stay of further proceedings, including execution. The filing of a motion without the required payment does not stay execution or further proceedings.

**K. Prior Administrative Order**

This order replaces Administrative Order No. 4.06 (v1) entitled "Bail Bond Actions," dated March 26, 2007.

**ORDERED** on this 14<sup>th</sup> day of November, 2012.



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Robert E. Roundtree, Jr., Chief Judge

**EXHIBIT "A"**

IN THE \_\_\_\_\_ COURT OF THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

STATE OF FLORIDA

Plaintiff

CASE NO.: \_\_\_\_\_

vs.

\_\_\_\_\_/

Defendant.

DIVISION: \_\_\_\_\_

**AFFIDAVIT OF COSTS ON BOND FORFEITURE**

I, \_\_\_\_\_, being sworn, certify that the following statements are true:

1. I am the surety or bond agent on Bond Power \_\_\_\_\_.
2. The bond was forfeited on \_\_\_\_\_.
3. The Defendant has been returned to the jurisdiction of \_\_\_\_\_ County, and I am entitled to a discharge of the bond, on the condition that I provide proof by affirmation of the Sheriff that the transportation costs have been paid.
4. All costs due to the Sheriff of \_\_\_\_\_ County, in the amount of \$\_\_\_\_\_, for the transportation of the Defendant, as required under section 903.26(8), Florida Statutes, have been paid in full.

\_\_\_\_\_  
Surety or Bond Agent

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me on \_\_\_\_\_ by \_\_\_\_\_, who  is personally known to me, **or** who  produced \_\_\_\_\_ as identification, and who did take an oath.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print or stamp commissioned name of notary.

**EXHIBIT "B"**  
**SHERIFF'S AFFIRMATION**

Pursuant to section 903.26(8), Florida Statutes

[Every Sheriff or correctional institution in every county within the Eighth Judicial Circuit may modify this form for use in the circuit. All blanks for the County and Sheriff should match.]

Name of Defendant: \_\_\_\_\_

Court Case No.: \_\_\_\_\_

County of Case: \_\_\_\_\_

Bond Power No.: \_\_\_\_\_

I, \_\_\_\_\_, a duly appointed Deputy Sheriff or otherwise authorized employee of the \_\_\_\_\_ County Sheriff's Office, do hereby affirm that the following is true and correct:

The Defendant was returned on \_\_\_\_\_ to the jurisdiction of \_\_\_\_\_ County by the following method (check one):

- Transport from outside \_\_\_\_\_ County by the \_\_\_\_\_ County Sheriff's Office or a private transport company (receipt attached)
- Transport from within \_\_\_\_\_ County by the \_\_\_\_\_ County Sheriff's Office (no fee)
- Surrender at \_\_\_\_\_ County's detention center, transported by the surety agent (no fee)
- Other: \_\_\_\_\_

\_\_\_\_\_  
Deputy Sheriff or Authorized Employee

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing Sheriff's Affirmation was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_, who  is personally known to me, **or** who  produced \_\_\_\_\_ as identification, and who did take an oath.

\_\_\_\_\_  
Deputy Sheriff/Notary Public, State of Florida

**EXHIBIT "C"**

IN THE \_\_\_\_\_ COURT OF THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

STATE OF FLORIDA  
Plaintiff

CASE NO.: \_\_\_\_\_

vs.

\_\_\_\_\_/\_\_\_\_\_  
Defendant.

**ORDER QUASHING CAPIAS**

Upon Motion for an Order Quashing Capias ordered/issued on \_\_\_\_\_ for failure to appear for \_\_\_\_\_, the Court having considered said Motion, it is

**ORDERED AND ADJUDGED** that the Capias is quashed and the corresponding forfeiture, if any, is set aside with the bond remaining in effect.

**ORDERED** on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Circuit/ County Court Judge

Copies furnished to:

Assistant State Attorney  
Assistant Public Defender  
Alachua County Department of Corrections