

**AMENDED ADMINISTRATIVE ORDER GOVERNING SURETY BOND**  
**FORFEITURE AND REMISSION PROCEDURES FOR**  
**THE NINTH JUDICIAL CIRCUIT**

**WHEREAS**, it is the public policy of the State of Florida that a criminal surety bail bond shall be construed as a commitment by and an obligation upon the bail bond agent/surety to ensure that a defendant appears at all criminal proceedings and otherwise fulfills all conditions of the bond; and

**WHEREAS**, the failure of a defendant to appear at any criminal proceedings subsequent to the issuance of the bond or the failure of the defendant to comply with any of the bond conditions constitutes a breach by the bail bond agent/surety of his or her commitment and obligation; and

**WHEREAS**, it appears that diverse procedures are currently used within the Ninth Judicial Circuit for cases in which criminal defendants fail to appear for scheduled court proceedings, particularly in regard to the forfeiture of a defendant's surety bond, the subsequent surrender or arrest of a non-appearing defendant, and the discharge and remission of a forfeiture; and

**WHEREAS**, when non-appearing defendants are found and placed in the custody of another county, either in Florida, or in another state, by the efforts of law enforcement, the bail bond/surety or otherwise, additional procedures are required, under the strict terms of applicable Florida Statutes, to bring defendants to the jurisdiction of the court and to relieve the bail bond

agent/surety of the forfeiture of its bond; and

**WHEREAS**, it appears that the important interest of conserving scarce judicial and law enforcement resources would be served by simplifying these procedures and making them consistent throughout this Circuit, while still accomplishing the purposes inherent in Chapter 903, Florida Statutes;

**NOW, THEREFORE, I**, Belvin Perry, Jr., pursuant to the authority vested in me as Chief Judge of the Ninth Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.050 order that the following procedures shall be followed in regard to all criminal cases in Orange County and Osceola County involving the failure of a defendant to appear, any forfeiture of the surety bond, subsequent surrender and arrest of a non-appearing defendant, the discharge of a surety bond forfeiture, and the remission of a surety bond forfeiture:

**1. Exoneration of Surety Prior to Forfeiture:**

a. A bail bond agent/surety (hereinafter referred to as “surety”) will be exonerated from liability on a bond if the surety surrenders the defendant prior to the bond being forfeited for its breach. A surety may surrender a defendant for this purpose by delivering a copy of the bond and the defendant to the official who had custody of the defendant at the time bail was taken or to the official into whose custody he or she would have been placed if he or she had been committed. That official shall take the defendant into custody and issue a certificate acknowledging surrender of the defendant. A surety may present that certificate, a copy of the bond and a receipt showing payment of attendant costs, if any, to the Clerk of Court along with a notice to the Clerk of Court that the defendant is in custody and that arrangements should be

made with the jail or prison facility for the defendant's future appearances. The surety shall provide the State Attorney at least three days notice of application for an order of exoneration and shall furnish him or her a copy of the certificate acknowledging surrender of the defendant. Upon receipt of the certificate acknowledging surrender of the defendant, the Clerk of Court shall automatically discharge the bond. See section 903.21(1), (2) and (3), Florida Statutes.

b. A surety shall be exonerated from liability on a bond if a determination is made prior to any breach of the bond that the defendant is in any jail or prison prior to the breach, and the surety provides a transport order and agrees in writing to pay the transportation costs of returning the defendant to the county in which the case is pending, to wit: either Orange County or Osceola County. See section 903.21(3), Florida Statutes. The phrase "any jail or prison" as stated in this subsection shall be interpreted in accordance with the Florida case law which excludes jails and prisons outside the State of Florida and shall not operate to exonerate or excuse the surety from returning the defendant to the Orange County jail facility or to the Osceola County jail facility if the surety has not attempted to obtain a court order for transporting the defendant to either of these facilities.

## **2. Forfeiture of Surety Bond:**

Pursuant to section 903.26(2)(b), Florida Statutes, failure of the defendant to appear at the time, date, and place of the required appearance shall result in automatic forfeiture of the bond. However, a bail bond shall not be forfeited for the failure of a defendant to appear at the time, date, and place of a required court appearance, unless:

(1) The information, indictment, or charging affidavit, as required by rule 3.140(a)(2), Florida Rules of Criminal Procedure, was filed within six months from the date of

arrest. See also section 903.26(1)(a), Florida Statutes; and

(2) The Clerk of Court gave the surety at least seventy-two (72) hours notice exclusive of Saturdays, Sundays, and holidays, before the time of the defendant's required appearance. Notice shall not be necessary if the time for appearance is within seventy-two (72) hours from the time of arrest or if the time is stated on the bond. See section 903.26(1)(b), Florida Statutes;

b. Notwithstanding a defendant's failure to appear at the required court appearance, the Court may determine in its discretion and in the interest of justice that an appearance by a defendant at a time other than that set in the notice, but on the same day as the required appearance does not warrant forfeiture of the bond, and, upon such appearance, the Court may direct, via a written order or the court minutes, the Clerk to set aside any forfeiture which may have been entered. Any appearance by a defendant on a day later than that set in the notice constitutes a forfeiture of the bond, and the court shall not preclude entry of such forfeiture by the Clerk. Said forfeiture may be discharged in accordance with the provisions of this Order as set forth herein.

c. The Clerk of Court shall mail the certificate of forfeiture within five (5) days of the forfeiture. Failure of the Clerk to mail the certificate of forfeiture shall not serve as a basis to set aside the forfeiture as set forth herein, unless the surety can demonstrate prejudice.

d. At the time the Court forfeits a bail bond for a defendant's failure to appear, it shall set new conditions of pretrial release. In doing so, the Court shall not release a defendant on his or her own recognizance if that defendant failed to appear, but who then voluntarily appeared or

surrendered. A defendant who failed to appear and who was surrendered or arrested at any time following forfeiture shall not be eligible for release on his or her own recognizance or on any bond which does not require a monetary undertaking equal to or greater than two thousand dollars (\$2,000.00) or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. Notwithstanding anything in this section, the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear. This section may not be construed as imposing additional duties or obligations on a governmental entity related to monetary bonds. See section 903.046(2)(d), Florida Statutes.

### **3. Surrender or Arrest of Non-Appearing Defendant:**

For the purposes of this Administrative Order, the terms "surrender or arrest" of a non-appearing defendant shall mean and include the following circumstances:

a. When the surety delivers a copy of the bond and the defendant to the official who had custody of the defendant at the time the bond was issued or to the official into whose custody he or she would have been placed if he or she had been committed, to wit: the Orange County Corrections Facility or the Osceola County Jail.

b. When a defendant is arrested on an outstanding capias or warrant at any location inside Orange County or Osceola County and is thereupon incarcerated in the Orange County Corrections Facility if the defendant failed to appear for a required court appearance in Orange County, or the Osceola County Jail if the defendant failed to appear for a required court appearance in Osceola County.

c. When a defendant appears in the court where he or she was originally required to

appear at the time the bond was forfeited.

#### **4. Transportation of Non-Appearing Defendant from Foreign Jurisdiction**

a. The surety will request a court order to have a defendant who has been surrendered, arrested and incarcerated elsewhere in Florida, transported to the appropriate county jail in this Circuit. All costs of transportation shall be borne by the surety. Failure to obtain a court order does not relieve the surety of his or her obligation under Chapter 903, Florida Statutes.

b. In the event the defendant surrenders or is arrested outside of Florida, the surety shall pay all costs of transporting the defendant from that location to the appropriate county jail in this Circuit, including extradition, if authorized, or other means. However, this subsection shall not operate to exonerate the bail bonds agent/surety of his/her obligations to bring the defendant back within the required sixty (60)-day period pursuant to section 903.26(5)(c), Florida Statutes.

c. Any order setting aside, discharging, vacating or remitting a forfeiture must include, at a minimum, a provision that the surety pay any transportation costs before the forfeiture is set aside, discharged or vacated or that any transportation costs be deducted from any funds remitted to a surety who has previously paid the forfeiture. Furthermore, if the surety has not paid the forfeiture, the surety shall pay the forfeiture amount in addition to the transportation costs.

#### **5. Discharge of Bond Forfeiture:**

a. A surety who seeks a discharge or setting aside of a forfeiture shall file a Motion for Discharge within sixty (60) days from the date the certificate of forfeiture was mailed. Any such Motion filed after the sixtieth (60th) day shall be void.

b. Upon filing a Motion to Set Aside/Discharge the Forfeiture, the surety shall immediately schedule a hearing on that Motion which must be held within the sixty (60)-day

time period from the date the certificate of forfeiture was mailed. Notice of the hearing must be sent to the State Attorney and the County Attorney. However, no hearing is required if the State Attorney and the County Attorney agree to the discharge, but the order setting aside the forfeiture must be signed and filed within the above stated sixty (60) days, with the exception of compliance with the provisions as stated in section 6 of this Administrative Order.

c. The Court shall discharge a bond forfeiture within sixty (60) days from the date that the certificate of forfeiture was mailed if a determination is made that:

(1) the requirements of section 2 paragraph a (1) and (2) of this Administrative Order have not been satisfied; or

(2) it was impossible for the defendant to appear as required due to circumstances beyond his or her control. However, the potential adverse economic consequences of appearing as required shall not be considered as constituting a ground for such a determination. See section 903.26(5)(a), Florida Statutes; or

(3) at the time of the required appearance, the defendant was adjudicated insane and confined in an institution or hospital or was confined in a jail or prison. See section 903.26(5)(b), Florida Statutes; and

(4) there was a surrender or arrest of the defendant within sixty (60) days after forfeiture if the delay has not thwarted the proper prosecution of the defendant. See section 903.26(5)(c), Florida Statutes. "Surrender or arrest" of the defendant shall be determined in accordance with the definitions set forth in section 3 paragraph a of this Order. The proper prosecution of the defendant shall be presumed not to have been thwarted absent an affirmative assertion by the State Attorney, which then must be established by evidence adduced at a hearing

on the matter.

d. Any order discharging a forfeiture shall be conditioned on the payment of any actual costs such as transportation costs which might be necessary to bring the defendant back to the Court of Orange County or of Osceola County. These costs exclude the cost of the judgment and post-judgment administration of the bond estreature matter by the Clerk and the Court, which costs are additional, and vary with the circumstances.

e. Sureties requesting the Clerk to automatically discharge a bond shall deliver to the Sheriff's Office a re-commitment order from the jail facility which is holding the defendant. Upon receipt of the re-commitment order, the Sheriff's Office shall determine the sum for the transportation costs, if any, and shall indicate said amount of costs on a form to be provided to the surety. The surety shall pay any transportation costs to the Sheriff's Office and the Sheriff's Office shall provide the surety with a receipt showing payment of said costs. The surety shall then take the re-commitment order and receipt to the Clerk's Office. Upon receipt of said documents, the Clerk shall automatically discharge the bond.

**6. Motions for Discharge of Bond Forfeiture Timely Filed, But Not Ruled Upon and Granted by the Judge Prior to Expiration of the Sixty-Day Period:**

a. In some cases, Motions for Discharge of the Bond Forfeiture are timely filed within the sixty (60)-day statutory requirement, but due to time constraints, the Court is unable to review these Motions until after the sixty (60)-day period has expired, thus causing the Clerk to enter the judgment for the bond forfeiture, even though the Court may have granted the Motion. Accordingly, in those cases in which the Defendant is returned to the custody of a jail or correctional facility in Orange County or Osceola County within ten (10) days prior to the sixtieth (60th) day and the surety has filed by the sixtieth (60th) day the Motion for Discharge of



the Bond Forfeiture with the appropriate documentation from the jail or correctional facility proving that the defendant was returned to custody within the sixty (60)-day period, the Clerk shall allow an additional ten (10) days from the sixtieth (60th) day for an order to be entered granting the Motion before requiring the surety to pay the forfeiture amount or subsequently entering a judgment. The surety must prove to the Clerk that the above stated conditions have occurred.

b. Furthermore, if a judgment is entered prior to the granting of the Motion for Discharge of the Bond Forfeiture, the subsequent Order granting the Motion for Discharge of the Bond Forfeiture shall serve as sufficient predicate for an Order Setting Aside the Judgment to be entered within the additional ten (10) day period. Thus, a Motion to Set Aside the Judgment and payment of the judgment to the Clerk will be unnecessary.

## **7. Judgment:**

a. With the exception of the provisions as stated above in section 6 of this Order, if the forfeiture is not paid or discharged by a Court order within sixty (60) days and the bond is secured other than by money and bonds authorized in section 903.16, Florida Statutes, the Clerk of the Circuit Court for the county where the Order issuing the bond was made shall enter a judgment against the surety for the amount of the penalty and issue execution, section 903.27(1), Florida Statutes.

b. Surety bonds may not be executed by a surety against whom a judgment has been entered which has remained unpaid for thirty-five (35) days and may not be executed for a company against whom a judgment has been entered which has remained unpaid for fifty (50) days. No Sheriff or other official who is empowered to accept or approve surety bonds shall

accept or approve such a bond executed by such a surety or executed for such a company until such judgment has been paid. See section 903.27(3), Florida Statutes;

c. After the Clerk gives notice of the judgment to the surety, the surety or bail bonds agent shall, within thirty-five (35) days of the entry of judgment, submit to the Clerk of the Circuit Court an amount equal to the judgment, unless the judgment has been set aside by the Court within thirty-five (35) days of the entry of judgment pursuant to section 903.27(4), Florida Statutes and/or the surety has complied with the requirements of section 6 of this Order.

d. With the exceptions as stated above in section 6 of this Order, the surety may, within thirty-five (35) days from the date of the judgment, file a Motion to Set Aside the Judgment. It shall be a condition of any such Motion that the surety pay the amount of the judgment to the Clerk, which amount shall be held in escrow until such time as the Court has disposed of the Motion to Set Aside the Judgment. In addition, the bonds agent/surety shall pay the costs of the forfeiture, costs of returning the defendant and any other costs, which can be identified and specified as a condition for setting aside the judgment, as if the court were instead setting aside a forfeiture. See section 903.27(5), Florida Statutes.

#### **8. Remission of Forfeiture:**

a. A surety must provide a copy of the Motion for Remission of Forfeiture along with any attachments and a notice of hearing to the County Attorney and the State Attorney, twenty (20) days prior to the hearing on said Motion.

b. The term "surrenders or apprehended" as used in section 903.28, Florida Statutes, shall be defined in accordance with the term "surrender or arrest" as that term is defined herein.

c. With the exception of the provisions as stated above in Section 6 of this

Administrative Order, pursuant to section 903.26, Florida Statutes, where no money for the right to remission has been paid by the end of the sixtieth (60th) day, a factually supported Motion shall be made, heard, and may be granted by the end of the sixtieth (60th) day to prevent judgment from being entered by the Clerk's office. No Motion for Remission shall lie where the amount of the forfeiture was not paid prior to the end of the sixtieth (60th) day from the date the certificate of forfeiture was mailed.

**9. Contents of Motion:**

a. Each motion seeking relief under sections 903.26, 903.27 or 903.28, Florida Statutes, must contain the following information and documentation:

- (1) The style, case number and division number of the present case, including where applicable, the style, case number and division number of the underlying criminal case.
- (2) A statement of the relief sought.
- (3) The statutory authority for the relief sought.
- (4) The date the bond was written, the case number and division number for which it was written, and the power number of the bond if necessary to avoid ambiguity.
- (5) The amount of the bond.
- (6) The date the notice of the failure to appear was mailed by the Clerk's office to the surety.
- (7) The date the defendant failed to appear.
- (8) The date the notice was mailed to the surety to produce the defendant for the proceeding on which the defendant failed to appear.
- (9) If applicable, a copy of the receipt from the Clerk's office showing the

amount of any payments of moneys required by Chapter 903, Florida Statutes as prerequisites for the relief sought by the surety. A copy of the receipt shall clearly show the defendant's name, the criminal case number and the date the receipt was issued or verification of the actual payment date if that date is different from the date of the receipt. Sureties requesting receipts from the Clerk of Court to be forwarded to them by mail must provide the Clerk of Court with a self-addressed stamped envelope.

(10) The date the defendant was surrendered or arrested, as that term is defined herein, to either Orange or Osceola County. A copy of the surrender or arrest form shall also be attached to the Motion.

(11) When applicable, the date the defendant was admitted to a correctional facility in a foreign jurisdiction, as that term is defined herein, or admitted to any other institution, the admission to which is relevant under Chapter 903, Florida Statutes. A surrender or arrest form from a correctional facility shall be attached to the Motion. In the case of an institution other than a correctional facility, documentation from that institution indicating the admission date and/or release of the defendant shall also be attached to the Motion.

(12) When applicable, the date a judgment against the surety/bonds agent was entered in the case.

(13) Any lawfully recognized defense, including legal authority, as asserted by the surety.

(14) A signed affirmation by the bonds agent that the contents of the Motion are truthful and accurate.

(15) A properly executed certificate of service indicating the date the copies of

said Motion were sent to the State Attorney and County Attorney.

b. The Court will not consider any motion which does not contain all of the above-stated requirements. A Motion to Set Aside a Judgment which does not meet the requirements of section 903.27(4) and (5), Florida Statutes or the provisions as stated in Section 6 of this Order, shall not be considered by the Court until such time as the deficiency is corrected and such Motion shall not toll the time periods provided by Chapter 903, Florida Statutes.

c. The Clerk's inability to mail the surety agent notice of the defendant's failure to appear within five (5) days of that failure to appear shall not constitute grounds for setting aside the forfeiture, absent a showing by the surety of prejudice.

**10. Canceling the Bond:**

1. The Orange County/ Osceola County Clerk of the Circuit and County Courts shall cancel a surety bond or a cash bond if any one of the below stated events occurs:

a. The defendant has been admitted to a pretrial intervention program and a copy of the signed pretrial intervention program contract has been received and filed by the Clerk.

b. The defendant has received a sentence and there are no other outstanding counts in the defendant's case.

c. The defendant has received a deferred sentence and there are no other outstanding counts in the defendant's case.

d. After the defendant is adjudicated a Notice of Appeal is filed.

e. The State Attorney's Office files a No Information Notice or a Nolle Prosequi on all counts in the defendant's case.

f. All counts in the defendant's case are dismissed.

g. A judgment of acquittal is entered on all counts in the defendant's case.

h. The surety bond or cash bond was posted for a lesser charge in the defendant's case and another bond remains posted for the most serious charge listed in the Information which consolidated charges from multiple arrest affidavits and upon which a supersedeas stamp appears.

i. The surety has surrendered the defendant by delivering a copy of the bond and the defendant to the official who had custody of the defendant at the time bail was taken or to the official into whose custody he or she would have been placed if he or she had been committed and the surety presents evidence of same to the Clerk of Court.

j. Pursuant to section 903.31(1), Florida Statutes, the bond has expired thirty-six (36) months after such bond was posted for the release of the defendant from custody.

k. Pursuant to section 903.31(3), Florida Statutes, in any case where no formal charges have been brought against the defendant within three hundred sixty-five (365) days after arrest, the court shall order the bond canceled unless good cause is shown by the state.

2. The cancellation of a surety bond or a cash bond for any reason other than those stated in this Administrative Order shall require a specific court order, unless otherwise authorized by Florida law.

#### **11. Reinstatement of Bond:**

Before an attorney files a motion to reinstate a bond, the attorney must get consent from the surety and must produce evidence with the motion showing the surety's consent. Also, upon hearing the motion to reinstate a bond, the issue regarding setting aside a bond forfeiture should be addressed.

**12. Compliance with Florida Statutes:**

This Administrative Order is entered for the purpose of supplementing and clarifying the procedures set forth in Chapter 903, Florida Statutes. Any procedural matters not specifically covered by this Administrative Order shall be governed by that Chapter.

**13.** This Administrative Order is effective immediately and Administrative Order No. 07-99-17-1 dated December 14, 2000 is vacated and set aside.

**DONE AND ORDERED** at Orlando, Florida, this 9<sup>th</sup> day of January, 2003.

/s/ Belvin Perry, Jr.  
Belvin Perry, Jr.  
Chief Judge

Copies to:

All Circuit & County Judges, Ninth Judicial Circuit  
State Attorney's Office, Ninth Judicial Circuit  
Public Defender's Office, Ninth Judicial Circuit  
General Counsel, Orange County Sheriff's Office  
Police Legal Advisor, Orlando Police Department  
Orange County Attorney's Office  
Osceola County Attorney  
Orange County Corrections  
Orange County Bar Association  
Bar Briefs, Orange County Bar Association  
Paul C. Perkins Bar Association  
Hispanic Bar of Central Florida  
Central Florida Association for Women Lawyers  
Clerk of Courts, Orange County  
Orange County Law Library  
Clerk of Courts, Osceola County  
The Osceola County Bar Association  
The Osceola County Law Library  
The Osceola County Sheriff's Office  
Director, The Osceola County Dept. of Corrections  
Office of the Statewide Prosecutor

Central Florida Criminal Defense Attorneys Association  
Executive Director of The Florida Bar  
Official Records, Orange County Comptroller  
The Bond Subcommittee Members

Administrative Order No. 07-99-17-2