



Michigan Supreme Court

State Court Administrative Office
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Milton L. Mack, Jr.
State Court Administrator

MEMORANDUM

DATE: January 5, 2017

TO: All Judges
cc: Court Administrators
Probate Registers
Magistrates
County Clerks
District Court Clerks

FROM: Milton L. Mack, Jr.

RE: SCAO Administrative Memorandum 2017-01
Surety Bond Process
(Replaces Administrative Memorandum 2016-03)

The process of issuing, releasing, or forfeiting surety bonds is governed by various court rules and statutes. Please adjust your procedures accordingly.

A. **Pretrial Release**

1. ***Procedure***

- a. The court states reasons on the record that the defendant's appearance or protection of the public cannot be assured with a personal recognizance bond or by money bail with or without conditions. MCR 6.106(C)-(D).
- b. If the court finds that conditions outlined in MCL 765.6 or 765.6a cannot be met by the defendant, a 10% bond shall not be set.
- c. If the court fixes a bail amount according to MCL 765.6(1) and allows for the posting of a 10% deposit bond, the accused person may post bail by a surety bond in an amount equal to one-fourth of the full bail amount fixed under MCL 765.6(1) and executed by a surety approved by the court.
- d. The defendant and surety sign form MC 241, Bond.

2. Note(s)

- a. MCR 6.106(E)(1)(a) provides that the court may require a defendant to post a bond executed by a surety approved by the court, by the defendant, or by another who is not a licensed surety.
- b. MCL 765.6a provides that before granting bail, a court shall require a cash bond or surety other than the applicant if the applicant is (1) charged with a crime alleged to have occurred while on bail pursuant to a bond personally executed by him or her, or (2) has been convicted of a felony twice within the preceding five years.

B. Conditions of Bond

1. Procedure

- a. Complete the form MC 240, Order for Pretrial Release, notating all condition of release.
- b. Notate all conditions of release on the bond prior to defendant, third party, or surety's signature on form MC 241, Bond.
- c. If a conditional bond is entered for the protection of named persons, the court forwards a copy of form MC 240, Order for Pretrial Release, to law enforcement for entry into LEIN.

2. Notes

- a. MCR 6.106(D) provides that if the court determines that the release of a defendant on a personal recognizance bond will not reasonably ensure the appearance of the defendant or will not reasonably ensure the safety of the public, the court may order a conditional bond.
- b. MCR 6.106(I)(2)(b) clarifies that bail agents are liable only for the appearance of a defendant, and not for compliance with conditions imposed on a defendant by the court as part of a conditional release pursuant to MCR 6.106. If a defendant fails to comply with the bond conditions, a court may continue the revocation order and enter judgment against the defendant for failure to comply with the conditions of release or failure to satisfy the court that compliance with those conditions was impossible.
- c. *Kondzer v Wayne County Sheriff*, 219 Mich App 632 (1996), held that a surety is only bound by those terms and conditions to which they agree or consent for the release of a defendant. A violation of conditional bond may result in forfeiture or revocation of a surety bond; however, this may only be imposed on a surety if they agreed or consented to the imposition

of the protective condition. A surety's agreement or consent must be made by written instrument or placed on the record and must not be a requirement for the surety to post the bond.

- d. In *People v Brow*, 253 Mich 140 (1931), the court held that a surety's obligation to guarantee a defendant's presence in court terminates upon sentencing unless the surety consents to the bond being continued.

C. Termination of Release Order and Notice to Surety

1. *Procedure*

- a. If the defendant has failed to appear, the court must enter the default on the record and notify the surety within 7 days of the date of the defendant's failure to appear. MCL 765.28(1). The notice must be served personally on the surety or left at the surety's last known business address. Complete SCAO-approved form MC 218a, Notice to Surety of Defendant's Failure to Appear.
- b. Upon finding that a defendant has failed to comply with conditions of release, the court may issue a warrant, form MC 229, Motion, Affidavit, and Bench Warrant.
- c. Upon issuing the bench warrant, the court shall enter an order revoking the release order and declaring the bail money deposited or the surety bond, if any, forfeited. MCR 6.106(I)(2). Prepare form MC 218, Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment. If the defendant failed to appear and a surety posted bond, the court must set a show cause date for the surety. MCL 765.28(1). Sign and mail the form to the defendant, the surety agent, anyone who posted bond, and the prosecutor.

2. *Notes*

- a. MCL 600.8511 does not confer to a district court magistrate the authority to sign an Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment (form MC 218).
- b. MCR 6.106 (I)(2) provides that a defendant's failure to comply with conditional release may result in revocation of the release order and forfeiture of bond.

D. Opportunity to Appear, Entry of Judgment

1. *Procedure*

- a. Hold the show-cause hearing. If good cause is not shown, the court may enter judgment against the surety or sureties, not exceeding the full amount of the bond.
- b. If a surety has posted a bond in an amount equal to one-fourth of the full bail amount fixed under MCL 765.6(2), the surety is only liable for that amount. The defendant is liable for the remainder of the bail set by the court. MCR 6.106(I).
- c. Prepare, sign, and mail form MC 238, Judgment after Bond Forfeiture, to the defendant and surety agent.
- d. If the bond or bail is forfeited, the court shall enter an order directing the disposition of the cash, check, or security within 45 days of the order. Upon receipt of a certified copy of the order, the treasurer or clerk shall dispose of the cash, check, or security pursuant to the order. MCL 765.15.
- e. The prosecuting attorney, attorney general, or an attorney for the local municipality may proceed with civil collection procedures.

2. *Notes*

- a. MCL 600.8511 does not confer the authority for a district court magistrate to hold a show-cause hearing on a forfeiture procedure.
- b. MCR 3.604(I)(1) provides that in an action where a bond or other security has been posted, a court may enter a judgment directly against the surety or security on motion without the need of an independent action showing liability on the bond or forfeiture of the security.
- c. MCR 6.106(I)(2)(b) provides that the court may continue the revocation order and enter judgment for the state or local unit of government, against the defendant alone, for an amount not to exceed the full amount of the bond, and costs of the court proceedings if the defendant does not satisfy the court within 28 days of the revocation date that: 1) there was compliance with the conditions of release other than appearance, or 2) compliance was impossible through no fault of the defendant.
- d. MCL 765.28 allows up to the full amount of the bond to be forfeited and a judgment entered by the court.

E. Remission of Penalty by Setting Aside the Forfeiture Order

1. *Procedure*

- a. Defendant or attorney files a Motion to Set Aside Forfeiture and Discharge of Bond and Notice of Hearing (form MC 399).
- b. The court schedules a hearing with proper notice to the prosecutor or an attorney for the local municipality.
- c. The motion may not be granted without payment of the costs and expenses incurred in the proceedings for the collection of the penalty. MCR 3.605(D).
- d. Pursuant to MCL 765.28, the court ***shall*** set aside the forfeiture and discharge the bail or surety bond if:
 - The person who forfeited bond or bail was apprehended less than 56 days after the bail or bond was ordered forfeited;
 - The ends of justice have not been thwarted;
 - The county has been repaid its costs for apprehending the person; and
 - The surety fully paid the forfeiture judgment within the 56-day period.Complete the Order on Motion to Set Aside Forfeiture and Discharge of Bond (form MC 399a).
- e. If the requirements of MCL 765.28 cannot be met, the court ***may*** remit any penalty or recognizance in full or in part if:
 - Good cause is shown; and
 - Doing so would be just and equitable. MCL 600.4835. See also *Calvert Bail Bond Agency, LLC v County of St. Clair*, ___ Mich App ___ (2016).
- f. If bond or bail is discharged, the court must enter an order with a statement of the amount to be returned to the depositor.

2. *Notes*

- a. MCR 3.604(I)(3) provides that if the court determines, in later proceedings or upon appeal, that the surety is not liable or the security should not have been forfeited, the court may order restitution of the money paid or security forfeited to the surety agent or person who posted bond.
- b. MCR 3.605(D) allows, with proper notice to the prosecutor or an attorney for the local municipality, an application for the remission of a penalty,

including a bond forfeiture, to be made to the judge who imposed the penalty or ordered the forfeiture.

F. Deposit of Forfeited Bond or Bail

1. *Procedure*

- a. If bond or bail is forfeited, an order must enter directing disposition of it within 45 days of the order. When presented with a certified copy of the order, the treasurer or clerk must dispose of the bond or bail pursuant to the terms of the order. MCL 765.15.
- b. If the court does not order an assignment of the bond, it must order the breach prosecuted by the attorney general or the prosecuting attorney for the county in which the bond was taken under MCR 3.604. Any penalty recovered must be paid into the treasury of the county in which the bond was taken, to the credit of the general fund. MCR 3.606(E).

2. *Notes*

- a. MCR 3.606(D) provides that the penalty of the bond for contempt outside the immediate presence of the court shall be credited to the general fund of the treasury of the county in which the bond was taken.
- b. MCL 765.15(1) sets forth the procedure to follow after a bond or bail is forfeited.
- c. MCL 765.15(2) states that any fine, costs, restitution, assessment, or other payment imposed upon a defendant whose bond or bail has been forfeited shall be collected from any cash bond or bail personally deposited by the defendant and must be allocated as provided in MCL 775.22.