



TAKING BAIL BONDS

MAGISTRATES' FALL CONFERENCE

CONCORD, NC
SEPTEMBER 21, 2023

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AGENDA

- Taking Bonds – General Provisions
- Secured Bonds – Cash
- Secured Bonds – Mortgage by Defendant
- Secured Bonds – Sureties
 - Surety Bonds – General
 - Licensed Sureties
 - Accommodation Bondsmen
- Stacking and Splitting Bonds, Bonds and ICE Detainers
- Reference Material



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GENERAL PROVISIONS

- Any judicial official “must effect the release of [the defendant] upon satisfying himself that the conditions of release have been met.” G.S. 15A-537(a).
- Meeting a monetary condition of release, unsecured or secured, **requires** execution of an Appearance Bond (AOC-CR-201).
 - The Appearance Bond is the defendant’s (and surety’s) contract with the State, permitting forfeiture of the bond if the defendant doesn’t appear.
 - The Release Order (AOC-CR-200) no longer contains contractual terms that would support forfeiture of the bond.
- Defendant **always** must sign the Appearance Bond, whether secured or unsecured, even if secured by a surety’s property.



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GENERAL PROVISIONS

- Unsecured Bonds
 - Requires no more proof of defendant’s solvency than a written promise.
- Secured Bonds
 - Can be secured by:
 - Cash (possibly the defendant’s)
 - Mortgage (only the defendant’s)
 - “at least one solvent surety”
 - A bond can be “secured” by a surety’s promise, alone.



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SECURED BONDS – CASH

- An Appearance Bond can be secured by “a cash deposit of the full amount of the bond.” G.S. 15A-531(4) (definition of “bail bond”).
- When “Cash” means “Ca\$h (only)”
 - “Cash only” Release Orders are not uncommon, but their legal basis is uncertain.
 - When a Release Order specifies cash, bond posted by an insurance company (via a bail agent) or a professional bondsman (personally or via a runner) “is considered the same as a cash deposit.” G.S. 15A-531(4).
 - But “[c]ash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash.” *Id.*



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SECURED BONDS – CASH – OWNERSHIP (OR “WHO GETS THE REFUND?”)

- Cash deposited by defendant
 - Appearance Bond should be executed in defendant’s name, only.
- Cash deposited by third party
 - If the third party wants to preserve ownership of the cash, it’s a “ **Surety Appearance Bond**”
 - The third party **must** execute the Appearance Bond as surety to preserve ownership of the cash and other rights as a surety.
 - If third party does not want to (or can’t) execute the bond as surety, prepare the Appearance Bond as a “ **Cash Appearance Bond By Defendant**” (*i.e.*, by defendant).



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SECURED BONDS – CASH – OVER \$10,000

- The clerk must report cash in excess of \$10,000 received as bail to the IRS and Financial Crimes Enforcement Network (FinCEN) and to certain US Attorney(s).
- Includes anyone receiving money on behalf of the clerk (*e.g.*, magistrates, jailers).
- Required only for certain offenses: drugs, racketeering, and money laundering (so for N.C. offenses, it's just drugs).
- “Cash” means any combination of:
 - Actual currency, and
 - Negotiable instruments (*e.g.*, money orders) for \$10,000 or less.



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SECURED BONDS – CASH – OVER \$10,000

- Cash bonds must be counted in the aggregate unless for “separate bail requirements.”
 - Bond for multiple charges arising from the same event should be aggregated.
- Suspicious transactions.
 - A cash bond transaction that doesn't technically require reporting should be reported anyway if “suspicious” – usually meaning the payor tries to structure a transaction in a way that wouldn't require reporting.
- Report on IRS Form 8300; guidance is in IRS Publication 1544.



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SECURED BONDS – CASH – OVER \$10,000 – IRS FORM 8300

- Must include information on defendant and any third party posting cash, **even if the third party does not sign the Appearance Bond as surety.**
- Official taking bond **must** verify identity of any third party providing the cash by some official documentation.
 - For cash provided by alien - passport, alien ID card, or other document showing nationality or residence.
 - G.S. 15A-311: No matricula consular or non-passport issued by a foreign consulate or embassy.
 - IDs issued by local authorities may suffice in a pinch. G.S. 15A-311(c).
 - For anyone else - any ID normally accepted when cashing a check.



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SECURED BONDS – MORTGAGE BY DEFENDANT

- A defendant may post a mortgage to his own property for an Appearance Bond.
- Most counties require a deed of trust, rather than an actual mortgage.
- A bond posted by mortgage or deed of trust to property owned solely by the defendant is a “ **Defendant’s Property Appearance Bond**” on AOC-CR-201.
- One unique feature of bonds secured by a true “mortgage” - they require an affidavit of the property’s value from a disinterested witness. G.S. 58-74-30.



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SECURED BONDS – SURETY BONDS - GENERAL PROVISIONS

- Surety: “one who, with the principal [defendant], is liable for the amount of the bail bond upon forfeiture of the bail.” G.S. 58-71-5(10).
- Upon forfeiture, defendant and surety are jointly and severally liable to the State for the amount of the bond. G.S. 15A-544.7(a).
- A surety must be one of three entities, G.S. 15A-531(8):
 - Professional Bondsman
 - Insurance Company
 - Accommodation Bondsman
 - [Actually, there’s a fourth – a Motor Club.]



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SECURED BONDS – SURETY BONDS - GENERAL PROVISIONS

- A surety must be “solvent.”
 - G.S. 15A-537(a): Determining that a defendant’s conditions of release have been met “includes determining if sureties are sufficiently solvent to meet the bond obligation.”
- Factors to determine a surety’s solvency sometimes are in local bond policies.
 - Most common policy: a threshold bond amount at which specific collateral (*i.e.*, cash or a deed of trust) will be required.
- Solvency of licensed sureties is based on deposits with the Department of Insurance, but current deposits are not available to review when taking a bond.



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SECURED BONDS – SURETY BONDS – LICENSED SURETIES

- Professional Bondsmen and Insurance Companies.
- Runners and Bail agents (surety bondsmen), are licensed by DOI but are only the sureties' agents; they are **not** sureties, themselves.
 - An agent may not execute bonds outside the scope of his license.
 - *E.g.*, If a runner's professional bondsman also is a bail agent (holding two licenses), the runner may **not** execute bonds for his employer's insurance company unless licensed as a bail agent of that company, himself.



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SECURED BONDS – SURETY BONDS – LICENSED SURETIES

- A licensed surety whose license is not suspended, cancelled or revoked generally may execute bonds in any county in the State.
- An unsatisfied bond forfeiture judgment prohibits licensed entities from executing new bonds. G.S. 15A-544.7(d).
 - The surety on a forfeiture judgment may not execute new bonds for that same county's cases until the judgment is satisfied.
 - An individual licensee (professional, agent, or runner) "whose name appears on a bond" executed \geq 12/1/2016 that is the subject of an unsatisfied forfeiture judgment may not execute new bonds in licensed capacity, statewide, until the judgment is satisfied.



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SECURED BONDS – SURETY BONDS – LICENSED SURETIES

- So the surety (ins. co. or professional) might be on the charging county’s report of allowed sureties, but the agent might be prohibited in his individual capacity as a licensee.
 - Need to confirm that both the surety and the agent currently appear as allowed on the charging county’s report.
- See memo on Juno, “2016 Legislation - Bail Bonds and Bond Forfeitures - S.L. 2016-107,” Nov. 17, 2016.
 - <https://juno.nccourts.org/legal-memos>



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SECURED BONDS – SURETY BONDS – LICENSED SURETIES

- A surety prohibited from executing new bonds will be omitted from a VCAP county’s *Surety Report* (along with their agents) or an Odyssey county’s *Active Bond Entity Relationships Report*.
 - If not on the report for the charging county, the surety cannot execute a bond for that county’s cases.
 - An agent executing a bond **must** be listed on the current report as affiliated with the surety on whose behalf he wants to sign the bond.
- For statewide licensees prohibitions, also check both “Statewide Prohibited” reports.



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SECURED BONDS – SURETY BONDS – LICENSED SURETIES

- Reports are at: <https://www.nccourts.gov/services/find-a-bail-bondsman>
- Unlike AWARE, Odyssey will warn about prohibiting judgments in Odyssey counties, only.
- Need to use both the ‘allowed’ report and the “prohibited” reports to verify status.



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SECURED BONDS – SURETY BONDS – LICENSED SURETIES

- If charging county not yet implemented on Odyssey, and a licensee claims a prohibition is invalid, check VCAP’s Bondsman/Surety Details screen (VCBD) for the licensee in the charging county.
- VCBD screen shows all 3 types of prohibition (surety, licensee, and by DOI) and provides links to:
 - Forfeiture Index (county-specific, license-specific, with pending forfeitures and final judgments); and
 - Statewide Forfeiture Index (judgments only, but statewide and for all licensee’s licenses).
- If licensee can’t prove all prohibiting judgments have been satisfied (*i.e.*, receipts), don’t allow execution of new bonds.



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SECURED BONDS – SURETY BONDS – LICENSED SURETIES

- Affidavit required for every bond by a licensed surety.
 - A licensed surety executing a bond must “file with the clerk of court ... an affidavit on a form furnished by the Administrative Office of the Courts.” G.S. 58-71-140(d).
 - Affidavit is on Side Two of the Appearance Bond (AOC-CR-201) and must be executed on every bond posted by a licensed surety.
 - The affidavit “shall” include details of any premium paid (or to be paid) or collateral received in exchange for posting the bond.
- No blank bonds.
 - Licensed sureties may not execute “blank” bonds to be executed by another person. G.S. 58-71-110.



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SECURED BONDS – SURETY BONDS – LICENSED SURETIES

- Professional Bondsmen.
- Like a defendant, a professional bondsman is personally liable for a bond.
- Bonds may not be executed in a professional bondsman’s business name (e.g., “XYZ Bail Bonds”), because the Department of Insurance licenses bondsmen only in their personal capacities.



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SECURED BONDS – SURETY BONDS – LICENSED SURETIES

- Insurance Companies.
 - An insurance company can execute bonds only through a bail agent currently affiliated with that company on the *Surety Report* or the *Active Bond Entity Relationships Report*.
 - Mere possession of a company’s POA certificate does **not** mean the agent is currently permitted to sign bonds for that company, so check the *Report*.
- The POA certificate – the “solvency” of an insurance company.
 - “Solvency” is determined by the face value of the company’s POA certificate; it must be enough to cover the bond.



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SECURED BONDS – SURETY BONDS – MOTOR CLUB BONDS

- Motor club bonds are secured by an insurance company licensed to business in the State, but not necessarily to do *bail bond* business.
- Authorized to post appearance bonds for traffic offenses, up to \$1,500, except for an impaired driving offense or any felony. G.S. 58-69-55.
- Beware disclaimers of liability on a motor club bond, such as:
 - dollar amount limitations lower than \$1,500;
 - excluded offenses; or
 - **expiration dates.**



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SECURED BONDS – SURETY BONDS – MOTOR CLUB BONDS

- Motor clubs are not on the various surety reports or in the list of licensed sureties in Odyssey.
- Workaround: Prepare as a “□ **Surety Appearance Bond**” with the motor club’s information entered as an “Accommodation Bondsman.”
 - Before manually adding a motor club as a new party in Odyssey, search Party records to see if a particular motor club already has an Odyssey party record.



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SECURED BONDS – SURETY BONDS – ACCOMMODATION BONDSMEN

- Accommodation bondsman – private party not regulated by the Department of Insurance. Definition/qualifications are in G.S. 15A-531(1), G.S. 58-71-1(1):
 - Natural person (*i.e.*, no corporations, non-profits, partnerships, etc.)
 - 18 years of age
 - Resident of the State
 - Receives no compensation for executing the bond
 - Endorses the bail bond (*i.e.*, must sign the Appearance Bond)
 - Provides proof of solvency to satisfy the bond
- **NO** judicial or criminal justice official or attorney can serve as a surety, except for defendants who are close relatives. G.S. 15A-541; G.S. 58-71-105.



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SECURED BONDS – SURETY BONDS – ACCOMMODATION BONDSMEN

- “Solvency” of an accommodation bondsman:
 - “satisfactory evidences of ownership, value and marketability of real or personal property ... sufficient to assure that the full principal sum of the bond will be realized.” G.S. 15A-531(1).
- Official taking the bond can be satisfied about the surety’s solvency without requiring that specific property (cash or land) be encumbered for the bond.
- The surety’s assets or equity in property must be enough to satisfy the bond **after** deducting the value of his/her constitutional exemptions (\$1,000 in real property; \$500 in personal property).
 - Statutory exemptions in Chapter 1C don’t apply to judgments on bond forfeitures. G.S. 1C-1601(e)(2).



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SECURED BONDS – SURETY BONDS – SPECIFIC SECURITY

- Local bond policy generally sets the threshold amount at which specific security (cash or land) must be posted to satisfy a bond.
- The bond policy of the county where the **charge** is pending should be followed whenever possible.
- Cash is always acceptable.
 - Local school boards will prefer cash; collection is easier.



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SECURED BONDS – PROPERTY BONDS

- A property bond is the encumbrance of a specific parcel(s) of real property in order to secure the appearance bond (*i.e.*, by deed of trust).
 - A surety who executes a bond merely upon proof they own real property of a certain value might have demonstrated solvency, but without a deed of trust recorded with the Register of Deeds, the State has no priority interest in that land.
- **All** owners of an interest in the property must execute both the deed of trust and the Appearance Bond.
 - If the property is owned by sureties, **each** owner must meet all the qualifications of an accommodation bondsman. *I.e.*, no property owned in whole or in part by a non-person (*e.g.*, business, church, charity), by a minor, or by a non-resident.



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SECURED BONDS – PROPERTY BONDS – RENTED RESIDENTIAL PROPERTY

- The federal Protecting Tenants at Foreclosure Act of 2009 (PTFA), Pub. L. 111-22, Title VII, was re-enacted with no sunset date, effective June 2018. Pub. L. 115-174, Title III, sec. 304. (Original enactment in 2009 expired in 2014.)
 - Similar state law, G.S. 45-21.33A, was enacted in 2015 but repealed in 2019.
- The PTFA protects a tenant under a “bona fide lease or tenancy” of “a dwelling or residential real property” from immediate removal under certain circumstances.
- Property rented to a tenant covered by the PTFA may have less “marketability,” one of the factors a judicial official must consider when evaluating property as proof of an accommodation bondsman’s solvency. G.S. 15A-531(1).



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SECURED BONDS – PROPERTY BONDS – COMMON QUESTIONS

- “Case in County A, property in County B.”
 - Bond policies of the county where the **charge** is pending should be followed when possible.
 - Clerk of the charging county must be made trustee and hold the court’s copy of all bond documentation (including the deed of trust).
- Jointly-owned property.
 - Local rules might prohibit bonds secured by property owned jointly by defendant and another person, particularly a spouse.
 - If not prohibited by local rule, any bond secured thereby should be collectible if the Appearance Bond and deed of trust are executed by both owners, and the deed indicates the grantors are spouses.



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STACKING AND SPLITTING BONDS

- **Stacking:** Posting a single Appearance Bond to satisfy the monetary condition of a release order, using multiple (“stacked”) forms of security, none of which individually covers the full amount of the bond.
- Example: A bail agent and the defendant’s girlfriend sign a single bond (CR-201) to satisfy a \$100,000 condition of release, attaching to that single bond:
 - a POA certificate from agent’s insurance company worth \$60,000; and
 - a deed of trust to girlfriend’s property for \$40,000.



TAKING BAIL BONDS

STACKING AND SPLITTING BONDS

- Sureties should not be allowed to stack security for a bond.
- By signing the same bond, the sureties are jointly and severally liable for the entire amount, but **neither** has proved solvency for the entire amount.
- Insurance companies present an additional problem when stacking: power of attorney certificates often are void if joined with other security for the same bond or same defendant.



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STACKING AND SPLITTING BONDS

- **Splitting:** Posting multiple bonds (multiple CR-201s) to satisfy the total amount required, with each bond secured by separate security.
- Example: a bail agent and the defendant's girlfriend execute two separate CR-201s to satisfy a \$100,000 condition of release:
 - Bond #1 with a \$60,000 POA certificate from an insurance company, executed only by defendant and bail agent; and
 - Bond #2 with a \$40,000 deed of trust to the girlfriend's property, executed only by defendant and girlfriend.



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STACKING AND SPLITTING BONDS

- There is no statutory guidance on splitting (for or against), but it may be prohibited by local policy.
- Beware splitting that is really “stacking” in disguise, *e.g.*, a bail agent wants to sign two bonds, with POA certificates from the same company attached to both.



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BONDS AND ICE DETAINERS

- Immigration and Customs Enforcement (ICE) detainers authorize an LEA with custody of a person to continue holding the person for 48 hours after he is “not otherwise detained.” 8 CFR §287.7.
- Detainer has no bearing on a defendant’s eligibility for release in a State case, including the ability to post bond.
 - May wish to inform the defendant/surety that the bond will **not** secure the defendant’s immediate release.
 - If they still want to post, take the bond as if the detainer did not exist.
- Defendant/surety is **not** entitled to cancel the bond, obtain a refund, or retrieve a bondsman’s seal or POA due to the detainer. Once executed, the bond (and documentation) is a record of the court.



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REFERENCE MATERIAL

- *North Carolina Clerk of Superior Court Manual Series (SOG)*
 - See CRIMINAL Manual, Chapter 3, “Criminal Appearance Bonds: Taking Secured Bonds”
 - Accessed via:
 - Juno - see “AOC Manuals and Benchbooks” link on home page; or
 - <https://clerks.sog.unc.edu/>
- *Criminal Proceedings before North Carolina Magistrates (SOG, 2014)*
 - Appendix: “Outline of Procedures for Taking Bail Bonds”
 - See errata sheet (2023) for the Appendix, distributed with conference materials.



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REFERENCE MATERIAL

- Legal Memos on Juno (select “Criminal Memos” in the “Category” dropdown)
- Your county’s local bond policy
 - Produced by your senior resident superior court judge, in consultation with the chief district court judge. G.S. 15A-535.
 - May be filed as an administrative order in the “R” files.
- Your NCAOC field support staff:
 - <https://juno.nccourts.org/resources/references/bapm-field-support-staff-assignments-map>



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BOND FORFEITURES – FREQUENTLY ASKED QUESTIONS

Questions?



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THANK YOU

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