



**Errata and Updates for *Criminal Proceedings before North Carolina Magistrates* (UNC SOG 2014)
Appendix (“Outline of Procedures for Taking Bail Bonds”)
Magistrates’ Conference – September 21, 2023**

This errata sheet provides corrections and updates to the Appendix on taking bail bonds to account for legislative and other changes since the book’s last publication in 2014. This errata sheet (2023) is cumulative to and supersedes the edition dated December 13, 2022.

Legislative changes or changes to forms and applications that have no substantive impact on magistrates’ functions in overseeing the execution of bonds are not addressed here. *E.g.*, this errata sheet does not cover the minor cosmetic correction to form AOC-CR-201 (Appearance Bond for Pretrial Release), Rev.2/21, for which the jurat on Side One is captioned with “Sworn/Affirmed and Subscribed to Before Me,” rather than “Sworn and Subscribed to Before Me” as it appeared in 2014.

I. Instructions for “Completing the AOC-CR-201”

References to form AOC-CR-201 in these errata and throughout the Appendix to *Criminal Proceedings before North Carolina Magistrates* refer to the consolidated version of the form posted at <https://www.nccourts.gov/documents/forms>, which covers all methods of posting a bail bond, *i.e.*, by the defendant alone or by a defendant with sureties, whether licensed sureties (bondsmen) or accommodation bondsmen not licensed by the N.C. Department of Insurance (DOI).

These errata do not address the multiple versions of form AOC-CR-201 as produced from the Odyssey application from Tyler Technologies, each of which is customized to a particular method of posting a bond. Therefore step-by-step instructions throughout the Appendix for “**Completing the AOC-CR-201**” for different types of bonds should be understood to apply only to the consolidated version of the form posted at www.nccourts.gov. Guidance for data entry in Odyssey is provided in the Quick Reference Guides (QRG) and other eCourts instructional material from the Business Analysis and Process Management (BAPM) division of the Administrative Office of the Courts (NCAOC). See links under the heading for “Training Resources” at <https://juno.nccourts.org/ecourts-hub>.

II. Page 63, Introduction

The citation to the corresponding chapter of the Clerks’ manual should appear as:

Joan G. Brannon & Ann M. Anderson, *CRIMINAL* ch. 3, “Criminal Appearance Bonds: Taking Secured Bonds,” North Carolina Clerk of Superior Court Manual Series, edited by Meredith Smith and Jan S. Simmons, UNC School of Government, 2022, <https://sog.unc.edu/clerkmanual>.

III. Page 65

- A. Under paragraph b.i.(2)’s bullet for **Completing the AOC-CR-201: Cash Bond by Surety**,” in the 3rd hollow bullet, the checkbox option for “ **Cash Deposited by Surety**” no longer appears on the

AOC-CR-201. The option for **Surety Appearance Bond** now includes contingent phrasing about cash bonds that replaced the former checkbox option.

- B. Under paragraph 4. (cash bonds greater than \$10,000), the current citation to the relevant text in the NCAOC’s Financial Procedures Manual (cited in the appendix as the “Clerk of Superior Court Financial Policies and Procedures”) should appear as follows. Note that the Financial Procedures Manual is hosted on the NCAOC’s Juno intranet site, so the link below is accessible only within the NCAOC’s intranet.

Note: See also, N.C. Administrative Office of the Courts, “Q. Cash Receipting - Form 8300: Report of Cash Payments Over \$10,000 - Financial Procedures Manual,” FINANCIAL PROCEDURES MANUAL, Chapter 3, <https://juno.nccourts.org/resources/manuals/q-cash-receipting-form-8300-report-cash-payments-over-10000-financial-procedures>

IV. Page 67

In paragraph iii. (Suspicious Transactions), the current version of IRS Publication 1544 is dated September 2014, not 2012.

V. Page 68

In paragraph e.ii.(2) (at the top of the page) and paragraph iii.(2) (center of the page, third bullet), the current version of IRS Publication 1544 is dated September 2014, not 2012.

VI. Page 70

- A. In paragraph 4.c.iii., in addition to the prohibition on a licensed “surety” (meaning a professional bondsman or insurance company) from executing new bonds in a county in which that surety has an unsatisfied final judgment of forfeiture, any professional bondsman, bail agent (surety bondsman), or runner is prohibited from executing any new bonds statewide while there is an unsatisfied judgment of forfeiture for a bond on which that licensee’s name appears in their licensed capacity.

For more information on the statewide licensee prohibition, see the memo of Nov. 17, 2016, “2016 Legislation - Bail Bonds and Bond Forfeitures - S.L. 2016-107,” available to Judicial Branch users on Juno under the Legal Memos category for Criminal Memos (direct link at: https://juno.nccourts.org/sites/default/files/media/memo_-_2016_legislation_-_bail_bonds_and_bond_forfeitures_-_s_l_2016-107_0.pdf).

Note that the link above is on the NCAOC’s Juno intranet site, so it is accessible only within the NCAOC’s intranet.

- B. Paragraphs 4.c.iv. and 4.c.v on pp. 70-71 should be replaced with the following:

“iv. A surety’s or individual bondsman’s current authorization to execute bonds for the charging county is reported (i) on the *Surety Report* from the NCAOC’s Civil Case Processing System (VCAP), or (ii) for counties that have been converted fully to the NCAOC’s eCourts applications, the *Active Bond Entity Relationships Report* from Odyssey.

- (1) The VCAP or Odyssey report of active sureties and licensees might be distributed in paper format in some counties, but the most current version of each is available online at: <https://www.nccourts.gov/services/find-a-bail-bondsman>.

The direct navigation to reach that page from the nccourts.gov home page is via the “Services” dropdown menu, under the option for “See All Services.” The link for “Find a Bail Bondsman” appears on the main “Services” page under “Additional Services and Requests.”

- (2) If a surety or licensee appears on the *Surety Report* or the *Active Bond Entity Relationships Report* for the charging county, and the surety or licensee currently is not prohibited on either of the statewide “prohibited” lists (discussed below), then that surety currently is allowed to execute bonds for the charging county’s cases.
 - Not all counties print daily copies of the *Surety Report* or *Active Bond Entity Relationships Report*. If the county prints the report weekly (or less frequently), the online report is a more reliable source of a surety’s or licensee’s current status, because their status may change daily.
 - When taking a bond for another county’s case, the official should ensure that the surety and licensee appear on the *Surety Report* or *Active Bond Entity Relationships Report* of the charging county before taking the bond.
 - An agent who wishes to execute a bond may do so only if the agent is listed on the current report and is affiliated with the surety on whose behalf the agent wishes to execute the bond.
 - o Because a runner may work for only one professional bondsman at a time, the runner will be listed with only one professional bondsman affiliation.
 - o Because a bail agent may be affiliated with multiple insurance companies, the official taking the bond should be careful to ensure that the company for whom the agent presents a power of attorney (POA) certificate currently is affiliated with that agent.
 - Sureties prohibited in the charging county are omitted from the relevant report.
- (3) Unlike the retired NC AWARE application, Odyssey does not have access to the surety list in VCAP and therefore does not function exactly as NC AWARE did when attempting to associated a prohibited surety or licensee with a new bond.
 - If a licensed entity has been suspended by the Department of Insurance (DOI), Odyssey will not display the entity in the “Active” list when selecting the parties to a bond. These prohibited licensees will be listed in the “All” or “Inactive” views but should not be attached to new bonds.
 - o For a charging county that has fully implemented the eCourts applications, if the licensee attached to a bond currently is subject to

one of the judgment-based prohibitions, either county-specific or statewide, Odyssey will warn the official preparing an appearance bond for that county.

- This warning will appear as a pop-up message when the Odyssey user tries to save the bond as complete. Like AWARE, the warning will allow the user to continue with execution of the bond, if the licensee can demonstrate to the official that the prohibiting judgment(s) has been satisfied.
 - However, because there is no direct interface between Odyssey and VCAP, before allowing any entity licensed by DOI to execute a new bond, then in addition to checking the *Surety Report* or *Active Bond Entity Relationships Report* for the charging county, officials also should check the two lists of licensed sureties currently prohibited statewide from posting new bonds.
 - Neither application accounts for final judgments on bond forfeitures entered in a county currently using the other application. Therefore neither application, by itself – and neither the *Surety Report* nor the *Active Bond Entity Relationships Report* for the charging county – can indicate definitively whether an individual licensee currently is subject to the statewide prohibition for an unsatisfied forfeiture judgment under G.S. 15A-544.7(d).
 - To supplement the *Surety Report* and the *Active Bond Entity Relationships Report*, both VCAP and Odyssey also produce a daily “Statewide Prohibited Bondsman / Surety List” of licensees currently prohibited statewide due to an unsatisfied judgment of forfeiture in a county for which judgments are docketed in one of the two applications.
 - Both statewide prohibition lists are linked on the “Find a Bail Bondsman” page linked above. The title appearing on the PDF of the statewide prohibition report from Odyssey is the “Statewide Prohibited Bond Entities Report.” The version produced by VCAP is the “Statewide Prohibit Report Effective [date].”
 - Before allowing a licensed surety to post a bail bond, a judicial official should check both (i) the *Surety Report* or *Active Bond Entity Relationships Report* for the charging county, and (ii) the statewide prohibition lists. The first report might show that a licensed surety currently would be eligible to post a bond for the charging county, but if the licensee appears on the statewide “prohibited” report, they are not permitted to post bonds until all prohibiting judgments are satisfied.
- (v) A surety’s appearance on the *Surety Report* or *Active Bond Entity Relationships Report* is not the sole factor in determining whether or not the surety may execute a bond. As noted above, officials also should check the statewide “prohibited” lists to ensure that an entity listed on the *Surety Report* or *Active...* report is not subject currently to a

statewide prohibition. In addition, professional bondsmen are limited in the dollar amounts of bonds they can post, and insurance companies limit their agents' authority for a single bond to the amount specified in their POA certificates. See both sections d. and e. below."

VII. Page 72

In paragraph ii. (solvency of a professional bondsman), in sub-paragraph (1) (first bullet) and sub-paragraph (2), the limitation that a professional bondsman's securities on deposit with the Commissioner of Insurance must be equal to at least "one-eighth" of the bondsman's total outstanding bonds was amended to "one-twelfth" by S.L. 2018-38, effective June 22, 2018. *I.e.*, a bondsman may not have outstanding as of the first of any month total bond obligations amounting to more than twelve times his or her current securities on deposit with DOI.

VIII. Page 74

In paragraph (5) (bottom of page), like NC AWARE, the Odyssey application does not include motor clubs in its lists of licensed sureties. Therefore officials should continue to enter any motor club bond as a bond by an "Accommodation Bondsman."

IX. Page 79

The content of the second hollow bullet (middle of the page) should be replaced with the following. The third hollow bullet near the bottom of the page (regarding the parties to a deed of trust) remains the same.

- Judicial officials should be cautious about accepting a deed of trust to rented residential property.
 - Since 2009, a series of State and federal laws have protected the interests of a tenant in rented residential property when the property is sold via foreclosure. The initial legislation protecting tenants' interests has expired or been repealed, but the U.S. Congress re-enacted those protections in 2018 with no sunset date.
 - The federal Protecting Tenants and Foreclosure Act of 2009, Pub. L. 111-22, Title VII (hereafter "PTFA"), provided that buyers at foreclosure must honor certain existing leases of the foreclosed property. The 2009 act contained a sunset provision that would have ended its protections on December 31, 2012, but the act was extended until December 31, 2014, by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203. The PTFA was not extended further and therefore expired at the end of 2014.
 - In light of the expiration of the federal protections, the North Carolina General Assembly in 2015 enacted G.S. 45-21.33A, setting forth similar protections for tenants in foreclosed properties. S.L. 2015-178, effective October 1, 2015. However, in response to the permanent federal act discussed next, G.S. 45-21.33A was repealed, effective October 1, 2019. S.L. 2019-53.
 - In 2018, Congress re-enacted the PTFA, Pub. L. 115-174, Title III, sec. 304. The PTFA was re-enacted as it existed prior to its original expiration in December 2014 with no sunset date. Its protections therefore came back into effect in June 2018.
 - The PTFA provides that a tenant under a "bona fide lease or tenancy" of "a dwelling or residential real property" enjoys certain protections if the residential property is foreclosed upon. A tenant is "bona fide" under the PTFA if:

- the tenant is not the mortgagor (on a deed of trust, the “grantor”) or a child, spouse, or parent of the mortgagor;
 - the lease or tenancy was the result of an arms-length transaction; and
 - the lease or tenancy requires the receipt of rent that is not substantially less than the fair market rent for the property, or the rent is reduced or subsidized due to a federal, State, or local subsidy.
- The exact protections afforded to an individual tenant under the PTFA will vary based on the nature of the tenancy and the purchaser’s intent for the property, but in general, most tenants cannot be removed from the property before the end of any lease or, at a minimum, before the expiration of a 90-day notice provided by the purchaser at foreclosure.
 - Because of the protections afforded under the PTFA, a judicial official asked to accept a bond secured by a deed of trust to rented residential property with a “bona fide” tenant should consider the effect that the lease might have on the property’s “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).
 - For more information on the legislative history of the PTFA and State-level protections and the current protections afforded to tenants, see:
 - Meredith Smith, *Where are We Now: The Protecting Tenants at Foreclosure Act, On the Civil Side*, UNC Sch. of Gov’t Blog (Nov. 20, 2019, 5:45 p.m.), <https://civil.sog.unc.edu/where-are-we-now-the-protecting-tenants-at-foreclosure-act/>.
 - Memorandum from Nicole Brinkley, Assistant Legal Counsel (NCAOC), “Federal Protecting Tenants at Foreclosure Act Restored (Pub. L. 115-174, title III, 304, May 24, 2018, 132 Stat. 1339)” (Aug. 17, 2018), available to Judicial Branch users on Juno under the Legal Memos category for Foreclosures Memos. (Note: The date of posting on Juno displays as Sep. 25, 2018.)

X. Page 80

In the last bullet on the page, the pinpoint citation to the Clerks’ manual should appear as:

Joan G. Brannon & Ann M. Anderson, CRIMINAL ch. 3, “Criminal Appearance Bonds: Taking Secured Bonds,” at p. 3.13, North Carolina Clerk of Superior Court Manual Series, edited by Meredith Smith and Jan S. Simmons, UNC School of Government, 2022, <https://sog.unc.edu/clerkmanual>.