



**South Carolina Court Administration**  
South Carolina Supreme Court  
Columbia, South Carolina

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**MEMORANDUM**

TO: Summary Court Judges  
Clerks of Court  
Circuit Court Judges  
Solicitors

FROM: Robert L. McCurdy, Senior Staff Attorney

RE: Bonding Issues

DATE: July 25, 2008

**Effective June 25, 2008**, Act No. 346 of 2008 amended several sections of the Code concerning bonding issues. A brief description of those changes is provided below. The bill may be accessed at [http://www.scstatehouse.net/sess117\\_2007-2008/bills/577.htm](http://www.scstatehouse.net/sess117_2007-2008/bills/577.htm).

**Section 3** of Act 346 amended §38-53-50 relating to relief of a surety from bond. Subsection (A) of the statute is amended by adding that a surety filing a motion and an affidavit to be relieved on a bond must pay the clerk of court a fee of \$20.00 for the filing of the motion. The fee shall be retained by the clerk for use in the operation of the clerk's office to cover the costs of copies of the motion required by the surety. If the charge is within the jurisdiction of magistrate or municipal court, the \$20 fee should be paid to the court and forwarded to the county/municipal general fund.

Subsection (B), regarding immediate incarceration of the defendant, has been amended to allow the surety, after recommitting a defendant to a detention facility for a violation or eminent violation of a condition of the bond, to file with the detention facility and court within three days of recommitment, an affidavit clocked in by the clerk. The affidavit must state facts to support the surrender of the defendant for good cause. The surety should then file with the court a motion to be relieved on the bond.

Subsection (C) now provides that if a defendant is incarcerated by the surety or law enforcement as a result of a bench warrant, the surety shall file an affidavit with the court stating that the defendant is incarcerated in the appropriate detention facility as a result of the bench

warrant as well as the violation of the specific term or terms of the bail bond stated in the bench warrant. Once the affidavit has been filed, the surety is relieved of all liability on the bail bond by the court.

I have attached guidelines concerning the amended procedure for a bondsman to be relieved as surety on a bond. Also attached for bondsmen's use is SCCA/636, Affidavit of Surrender of Defendant by Surety, and SCCA/635, Motion to be Relieved on Bond.

**Section 4** of Act 346 amended §38-53-70 relating to the issuance of a bench warrant upon defendant's failure to appear for trial. The amendment requires that upon issuance of a bench warrant for failure to appear, the court shall make available at the clerk's office for pickup by the surety a true copy of the bench warrant within seven days of its issuance. The bill also amends that statute to provide the surety 90 days (as opposed to 30) to apprehend and recommit a defendant after the issuance of a bench warrant for failure to appear. After 90 days, and the defendant has not been recommitted, estreatment proceedings may be commenced.

Should you have questions concerning these matters, please contact this Office.

RLM/amh