



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

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MEMORANDUM

TO: Clerks of Court
Magistrates
Municipal Judges

FROM: Robert L. McCurdy, Assistant Director

RE: Bonding Issues Reminder

DATE: October 4, 2010

We have been asked to remind you of statutory requirements imposed on sureties, clerks of court, summary court judges, and detention facility employees relating to a surety's attempt to be relieved on a bond. We have also been asked to remind you of the statutory requirement imposed on clerks when a bench warrant is issued for a defendant's failure to appear. I have attached for your reference a memorandum issued by this Office on July 25, 2008, addressing these issues, as well as two forms used to facilitate the process. This memorandum does not supersede the July 2008 memorandum, but simply points out several issues in which we have received allegations of noncompliance. Your assistance in this matter is greatly appreciated.

1. §38-53-50 (a) provides a procedure for a surety to file a motion to be relieved on a defendant's bond for "good cause." There is no immediate incarceration of the defendant under this subsection and detention facility personnel are not immediately involved. The surety is required to file a motion (SCCA 635) and supporting affidavit (SCCA 636) with the appropriate court (\$20 filing fee required), serve copies of the same on the defendant, his attorney, and the solicitor's office. The court then schedules a hearing to determine whether the surety should be relieved on the defendant's bond.

§38-53-50 (b) provides a procedure for a surety to immediately incarcerate a defendant and file a motion to be relieved on a defendant's bond to prevent imminent violation of the specific terms of the bond or the defendant has already allegedly violated a specific term of the bond. The statute provides that the surety may take the defendant to the appropriate detention facility for holding until the court orders the surety be relieved. The surety must obtain the signature of a representative of the detention facility on the completed affidavit (SCCA 636), leaving a copy with the detention facility. When the

defendant and the affidavit (not clocked at this point) are presented to the appropriate detention facility, the facility **shall** take custody of the defendant. The surety is then required to file with the court a motion to be relieved on the bond (\$20 filing fee required) and supporting affidavit (signed by detention facility personnel) within three business days of recommitment. The surety is further required within three days of recommitment to provide the detention facility with a copy of the affidavit, now clocked by the clerk of court. The court then schedules a hearing to determine whether the surety should be relieved on the defendant's bond.

§38-53-50 (c) provides that if a defendant is incarcerated by the surety or law enforcement as a result of a bench warrant, the surety shall file with the court an affidavit 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 bond as stated in the bench warrant. Detention facility personnel **are statutorily required** to sign the surety's affidavit if they are presenting the defendant for immediate incarceration or the defendant is already incarcerated on a bench warrant. Once the affidavit has been filed with the court under this subsection, the surety is relieved of all liability on the bond and a further hearing involving that surety is not required.

2. §38-53-70 provides that when a duly summoned defendant fails to appear at a court proceeding, the court shall issue a bench warrant for the defendant's arrest. The clerk of court is **required** to provide a true copy of the bench warrant for pickup at the clerk of court's office by the surety or any representative thereof within seven days of its issuance.

RLM/mhb
Attachments

Cc: Circuit Court Judges
Solicitors