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RULE 4-217. BAIL BONDS

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(a) Applicability of Rule. This Rule applies to all bail bonds taken pursuant to Rule 4-216, 4-216.1, or 4-216.2, and to bonds taken pursuant to Rules 4-267, 4-348, and 4-349 to the extent consistent with those rules.

(b) Definitions. As used in this Rule, the following words have the following meanings:

(1) *Bail Bond.* "Bail bond" means a written obligation of a defendant, with or without a surety or collateral security, conditioned on the appearance of the defendant as required and providing for the payment of a penalty sum according to its terms.

(2) *Bail Bondsman.* "Bail bondsman" means an authorized agent of a surety insurer.

(3) *Bail Bond Commissioner.* "Bail bond commissioner" means any person appointed to administer rules adopted pursuant to Maryland Rule 16-805.

Cross reference: Code, Criminal Procedure Article, § 5-203.

(4) *Clerk.* "Clerk" means the clerk of the court and any deputy or administrative clerk.

(5) *Collateral Security.* "Collateral security" means any property deposited, pledged, or encumbered to secure the performance of a bail bond.

(6) *Surety.* "Surety" means a person other than the defendant who, by executing a bail bond, guarantees the appearance of the defendant, and includes an uncompensated or accommodation surety.

(7) *Surety Insurer.* "Surety insurer" means any person in the business of becoming, either directly or through an authorized agent, a surety on a bail bond for compensation.

(c) Authorization to Take Bail Bond. Any clerk, District Court commissioner, or other person authorized by law may take a bail bond. The person who takes a bail bond shall deliver it to the court in which the charges are pending, together with all money or other collateral security deposited or pledged and all documents pertaining to the bail bond.

Cross reference: Code, Criminal Procedure Article, §§ 5-204 and 5-205. See Code, Insurance Article, § 10-309, which requires a signed affidavit of surety by the defendant or the insurer that shall be provided to the court if payment of premiums charged for bail bonds is in installments.

(d) Qualification of Surety.

(1) *In General.* The Chief Clerk of the District Court shall maintain a list containing: (A) the names of all surety insurers who are in default, and have been for a period of 60 days or more, in the payment of any bail bond forfeited in any court in the State, (B) the names of all bail bondsmen authorized to write bail bonds in this State, and (C) the limit for any one bond specified in the bail bondsman's general power of attorney on file with the Chief Clerk of the District Court. The clerk of each circuit court and the Chief Clerk of the District Court shall notify the Insurance Commissioner of the name of each surety insurer who has failed to resolve or satisfy bond forfeitures for a period of 60 days or more. The clerk of each circuit court also shall send a copy of the list to the Chief Clerk of the District Court.

Cross reference: For penalties imposed on surety insurers in default, see Code, Insurance Article, § 21-103(a).

(2) *Surety Insurer.* No bail bond shall be accepted if the surety on the bond is on the current list maintained by the Chief Clerk of the District Court of those in default. No bail bond executed by a surety insurer directly may be accepted unless accompanied by an

affidavit reciting that the surety insurer is authorized by the Insurance Commissioner of Maryland to write bail bonds in this State.

Cross reference: For the obligation of the District Court Clerk or a circuit court clerk to notify the Insurance Commissioner concerning a surety insurer who fails to resolve or satisfy bond forfeitures, see Code, Insurance Article, § 21-103(b).

(3) *Bail Bondsman.* No bail bond executed by a bail bondsman may be accepted unless the bondsman's name appears on the most recent list maintained by the Chief Clerk of the District Court, the bail bond is within the limit specified in the bondsman's general power of attorney as shown on the list or in a special power of attorney filed with the bond, and the bail bond is accompanied by an affidavit reciting that the bail bondsman:

- (A) is duly licensed in the jurisdiction in which the charges are pending, if that jurisdiction licenses bail bondsmen;
- (B) is authorized to engage the surety insurer as surety on the bail bond pursuant to a valid general or special power of attorney; and
- (C) holds a valid license as an insurance broker or agent in this State, and that the surety insurer is authorized by the Insurance Commissioner of Maryland to write bail bonds in this State.

Cross reference: Code, Criminal Procedure Article, § 5-203 and Rule 16-805 (Appointment of Bail Bond Commissioner--Licensing and Regulation of Persons Authorized to Write Bonds).

(e) Collateral Security.

(1) *Authorized Collateral.* A defendant or surety required to give collateral security may satisfy the requirement by:

- (A) depositing with the person who takes the bond the required amount in cash or certified check, or pledging intangible property approved by the court; or

Cross reference: See Code, Criminal Procedure Article, §§ 5-203 and 5-205, permitting certain persons to post a cash bail or cash bond when an order specifies that the bail or bond may be posted only by the defendant.

- (B) encumbering one or more parcels of real estate situated in the State of Maryland, owned by the defendant or surety in fee simple absolute, or as chattel real subject to ground rent. No bail bond to be secured by real estate may be taken unless (i) a Declaration of Trust of a specified parcel of real estate, in the form set forth at the end of this Title as Form 4-217.1, is executed before the person who takes the bond and is filed with the bond, or (ii) the bond is secured by a Deed of Trust to the State or its agent and the defendant or surety furnishes a verified list of all encumbrances on each parcel of real estate subject to the Deed of Trust in the form required for listing encumbrances in a Declaration of Trust.

(2) *Value.* Collateral security shall be accepted only if the person who takes the bail bond is satisfied that it is worth the required amount.

(3) *Additional or Different Collateral Security.* Upon a finding that the collateral security originally deposited, pledged, or encumbered is insufficient to ensure collection of the penalty sum of the bond, the court, on motion by the State or on its own initiative and after notice and opportunity for hearing, may require additional or different collateral security.

(f) Condition of Bail Bond. The condition of any bail bond taken pursuant to this Rule shall be that the defendant personally appear as required in any court in which the charges are pending, or in which a charging document may be filed based on the same acts or transactions, or to which the action may be transferred, removed, or if from the District Court, appealed, and that the bail bond shall continue in effect until discharged pursuant to section (j) of this Rule.

(g) Form and Contents of Bond--Execution. Every pretrial bail bond taken shall be in the form of the bail bond set forth at the end of this Title as Form 4-217.2, and, except as provided in Code, Criminal Procedure Article, § 5-214, shall be executed and acknowledged by the defendant and any surety before the person who takes the bond.

(h) Voluntary Surrender of the Defendant by Surety. A surety on a bail bond who has custody of a defendant may procure the discharge of the bail bond at any time before forfeiture by:

- (1) delivery of a copy of the bond and the amount of any premium or fee received for the bond to the court in which the charges are pending or to a commissioner in the county in which the charges are pending who shall thereupon issue an order committing the defendant to the custodian of the jail or detention center; and
- (2) delivery of the defendant and the commitment order to the custodian of the jail or detention center, who shall thereupon issue a receipt for the defendant to the surety.

Unless released on a new bond, the defendant shall be taken forthwith before a judge of the court in which the charges are pending.

On motion of the surety or any person who paid the premium or fee, and after notice and opportunity to be heard, the court may by order award to the surety an allowance for expenses in locating and surrendering the defendant, and refund the balance to the person who paid it.

(i) Forfeiture of Bond.

(1) *On Defendant's Failure to Appear--Issuance of Warrant.* If a defendant fails to appear as required, the court shall order forfeiture of the bail bond and issuance of a warrant for the defendant's arrest and may set a new bond in the action. The clerk shall promptly notify any surety on the defendant's original bond, and the State's Attorney, of the forfeiture of that bond and the issuance of the warrant.

Cross reference: Code, Criminal Procedure Article, § 5-211.

(2) *On Defendant's Posting a Bond After Issuance of Warrant.* If a new bond is set under subsection (i)(1) of this Rule and the defendant posts the bond:

(A) a judicial officer shall mark the warrant satisfied; and

(B) the court shall reschedule the hearing or trial.

(3) *Striking Out Forfeiture for Cause.* If the defendant or surety can show reasonable grounds for the defendant's failure to appear, notwithstanding Rule 2-535, the court shall (A) strike out the forfeiture in whole or in part; and (B) set aside any judgment entered thereon pursuant to subsection (5)(A) of this section, and (C) order the remission in whole or in part of the penalty sum paid pursuant to subsection (4) of this section.

Cross reference: Code, Criminal Procedure Article, § 5-208(b)(1) and (2) and *Allegheny Mut. Cas. Co. v. State*, 234 Md. 278, 199 A.2d 201 (1964).

(4) *Satisfaction of Forfeiture.* Within 90 days from the date the defendant fails to appear, which time the court may extend to 180 days upon good cause shown, a surety shall satisfy any order of forfeiture, either by producing the defendant in court or by paying the penalty sum of the bond. If the defendant is produced within such time by the State, the court shall require the surety to pay the expenses of the State in producing the defendant and shall treat the order of forfeiture satisfied with respect to the remainder of the penalty sum.

(5) *Enforcement of Forfeiture.* If an order of forfeiture has not been stricken or satisfied within 90 days after the defendant's failure to appear, or within 180 days if the time has been extended, the clerk shall forthwith:

(A) enter the order of forfeiture as a judgment in favor of the governmental entity that is entitled by statute to receive the forfeiture and against the defendant and surety, if any, for the amount of the penalty sum of the bail bond, with interest from the date of forfeiture and costs including any costs of recording, less any amount that may have been deposited as collateral security; and

(B) cause the judgment to be recorded and indexed among the civil judgment records of the circuit court of the county; and

(C) prepare, attest, and deliver or forward to any bail bond commissioner appointed pursuant to Rule 16-805, to the State's Attorney, to the Chief Clerk of the District Court, and to the surety, if any, a true copy of the docket entries in the cause, showing the entry and recording of the judgment against the defendant and surety, if any.

Enforcement of the judgment shall be by the State's Attorney in accordance with those provisions of the rules relating to the enforcement of judgments.

(6) *Subsequent Appearance of Defendant.* When the defendant is produced in court after the period allowed under subsection (4) of this section, the surety may apply for the refund of any penalty sum paid in satisfaction of the forfeiture less any expenses permitted by law. The court shall strike out a forfeiture of bail or collateral and deduct only the actual expense incurred for the defendant's arrest, apprehension, or surrender provided that the surety paid the forfeiture of bail or collateral during the period allowed for the return of the defendant under subsection (4) of this section.

(7) *Where Defendant Incarcerated Outside This State.*

(A) If, within the period allowed under subsection (4) of this section, the surety produces evidence and the court finds that the defendant is incarcerated in a penal institution outside this State and that the State's Attorney is unwilling to issue a detainer and subsequently extradite the defendant, the court shall strike out the forfeiture and shall return the bond or collateral security to the surety.

(B) If, after the expiration of the period allowed under subsection (4) of this section, but within 10 years from the date the bond or collateral was posted, the surety produces evidence and the court finds that the defendant is incarcerated in a penal institution outside this State, that the State's Attorney is unwilling to issue a detainer and subsequently extradite the defendant, and that the surety agrees in writing to defray the expense of returning the defendant to the jurisdiction in accordance with Code, Criminal Procedure Article, § 5-208(c), subject to subsection (C) of this section, the court shall strike out the forfeiture and refund the forfeited bail bond or collateral to the surety provided that the surety paid the forfeiture of bail or collateral within the time limits established under subsection (4) of this section.

(C) On motion of the surety, the court may refund a forfeited bail bond or collateral that was not paid within the time limits established under subsection (4) of this section if the surety produces evidence that the defendant was incarcerated when the judgment of forfeiture was entered, and the court strikes out the judgment for fraud, mistake, or irregularity.

(j) Discharge of Bond--Refund of Collateral Security.

(1) *Discharge.* The bail bond shall be discharged when:

- (A) all charges to which the bail bond applies have been stteted, unless the bond has been forfeited and 10 years have elapsed since the bond or other security was posted; or
- (B) all charges to which the bail bond applies have been disposed of by a nolle prosequi, dismissal, acquittal, or probation before judgment; or
- (C) the defendant has been sentenced in the District Court and no timely appeal has been taken, or in the circuit court exercising original jurisdiction, or on appeal or transfer from the District Court; or
- (D) the court has revoked the bail bond pursuant to Rule 4-216.2 or the defendant has been convicted and denied bail pending sentencing; or
- (E) the defendant has been surrendered by the surety pursuant to section (h) of this Rule.

Cross reference: See Code, Criminal Procedure Article, § 5-208(d) relating to discharge of a bail bond when the charges are stteted. See also Rule 4-349 pursuant to which the District Court judge may deny release on bond pending appeal or may impose different or greater conditions for release after conviction than were imposed for the pretrial release of the defendant pursuant to Rule 4-216, 4-216.1, or 4-216.2.

(2) *Refund of Collateral Security--Release of Lien.* Upon the discharge of a bail bond and surrender of the receipt, the clerk shall return any collateral security to the person who deposited or pledged it and shall release any Declaration of Trust that was taken.

Credits

[Adopted April 6, 1984, eff. July 1, 1984. Amended Nov. 20, 1984, eff. Jan. 1, 1985; April 7, 1986, eff. July 1, 1986; June 28, 1988, eff. July 1, 1988; Nov. 22, 1989, eff. Jan. 1, 1990; June 5, 1996, eff. Jan. 1, 1997; Jan. 8, 2002, eff. Feb. 1, 2002; Nov. 12, 2003, eff. Jan. 1, 2004; May 8, 2007, eff. July 1, 2007; Dec. 4, 2007, eff. Jan. 1, 2008; Sept. 10, 2009, eff. Oct. 1, 2009; June 11, 2012, eff. June 12, 2012; Nov. 1, 2012, eff. Jan. 1, 2013; May 27, 2014, eff. July 1, 2014; March 2, 2015, eff. July 1, 2015; Dec. 7, 2015, eff. Jan. 1, 2016; June 6, 2016, eff. July 1, 2016.]

MD Rules, Rule 4-217, MD R CR Rule 4-217
Current with amendments received through February 1, 2017

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