

Presentation to
The Bail System Task Force
on Laws as to Judicial Branch Procedures

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Duties of Clerks of Court, District Court
Commissioners, and Bail Bond
Commissioners

Md. Rule 4-217(d)(1)

Chief Clerk of District Court must keep:

- each general power of attorney filed for a bail bondsman.
- a list with the name of every bail bondsman who is authorized to write bonds in Maryland and the limit for any one bond

under the general power of attorney.

- a list with the name of every bail bondsman who is and has been in default for 60 days or more on a forfeited bond.

Md. Rule 16-817

Each bail bond commissioner must:

- keep a list with the name, business address, business telephone number, limit on the amount of any one bond, and total limit on all bonds for each bail bondsman who is authorized to write bail bonds in the commissioner's jurisdiction.

- distribute the list periodically to:
 - ▶ all clerks of court and District Court commissioners within the bail bond commissioner's appellate judicial circuit.
 - ▶ the State Court Administrator.
 - ▶ the Chief Clerk of the District Court.

Md. Rule 16-817

Each clerk of court and District Court commissioner must post each list from a bail bond commissioner within the clerk's appellate judicial circuit.

Bail Bond Acceptance

Md. Rule 4-217(d)(2) and (3)

A person asked to take a bail bond should ensure that:

- the bondsman's name appears on the Chief Clerk's current list of authorized bondsmen.
- 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.

- the bondsman's name is not on the Chief Clerk's list of defaulters.

5th Circuit Rule 707e1 bars a clerk from approving or accepting bail, bond, or collateral offered by the defendant, surety, or bondsman until all forfeitures absolute are paid in full and satisfied.

Md. Rule 4-217(d)(2) and (3)

A person who is asked to take bail bond also must receive:

- if the surety insurer offers the bond directly, an affidavit that the surety insurer is authorized by the Maryland Insurance Commissioner to write bail bonds in Maryland.

- if a bail bondsman offers the bond, an affidavit that:
 - ▶ the surety insurer is authorized by the Maryland Insurance Commissioner to write bail bonds in Maryland;
 - ▶ the bondsman is a licensed as an insurance broker or agent by the Maryland Insurance Commissioner and,

if applicable, is licensed as a bondsman in the jurisdiction in which the charge(s) is pending.

- ▶ the bondsman is authorized to engage the surety insurer as surety on the bond under a valid general or special power of attorney.

Md. Rule 4-217(e)(2)

A person may accept proffered collateral security if the person is satisfied that the security is worth the amount required.

Md. Rule 4-217(e)(1)
*incorporated by reference in 7th Circuit Rule
714(g)(1)*

A person may accept collateral security in the form of:

- cash.

- a certified check.
- a pledge of intangible property approved by the court
- encumbrance of real estate that is located in Maryland and owned by the defendant or surety in fee simple absolute or as chattel real subject to ground rent, together with:
 - ▶ a Declaration of Trust that is executed

before the person who is offered the bond; or

- ▶ a Deed of Trust to the State or its agent and a verified list of all encumbrances on each parcel subject to the Deed.

Md. Rule 4-217(f) and (g)

A bail bond must:

- be in the form required by Md. Rule 4-217.1.
- be conditioned on:
 - ▶ a defendant appearing personally as

required in the court in which the charge(s) is pending, in which a charging document is filed based on the same act(s) or transaction(s), or to which the action is transferred or removed or, if from the District Court, appealed.

- ▶ the bond continuing in effect until discharged.

5th Circuit Rule 707a requires bond to be “conditioned on the continued personal appearance of the defendant before any justice of the peace, Trial Magistrate, grand jury or court when required. ... [and] secure the appearance of the defendant to any indictment which may later be filed against him based on the alleged criminal act which gave rise to the criminal cause in which the accused or witness is held to bail when the

bond is executed, although such indictment charges a different offense, or accuses more or fewer persons. ...”

7th Circuit Rule 714(c) requires a bond to be conditioned “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 remain in effect until discharged pursuant to Maryland Rule 4-217(j).”

7th Circuit Rule 714(g)(2) requires a defendant or uncompensated surety to execute, in lieu of a Declaration or Deed of Trust, a consent to lien.

Md. Rule 4-217(g)

A defendant and surety, if any, must execute and acknowledge a pretrial bail bond before the person who is offered the bond.

7th Circuit Rule 714(e) requires a surety to make oath before the person authorized to accept a bond that:

- the surety insurer's 7th Circuit license is in full force and effect and has not been suspended or revoked.*
- the total outstanding bonds secured by the surety are within the total amount*

authorized by Rule 714.

- *The surety has no forfeiture absolute unsatisfied for more than 90 days.*
- *the bond is in the form set forth in the Md. Form 4-217.2.*

Md. Rule 4-217(c)

A person who takes a bail bond must deliver it, and all collateral security deposited or pledged and documents as to the bond, to the court in which the charges are pending.

7th Circuit Rule 714(e)(2)(A) requires a clerk of court or District Court commissioner to send, to the 7th Circuit Bail Bond Commissioner within 10 days, a copy of a bail bond filed with the clerk.

7th Circuit Rule 714(g)(3) requires the 7th Circuit Bail Bond Commissioner to send, to a State's attorney or bail bond commissioner in the county where the property is located,

within 10 days, a copy of a bail bond and Declaration or Deed of Trust filed by a surety licensed outside the 7th Circuit.

Sufficiency

Md. Rule 4-217(e)(3)

On motion by the State or *sue sponte* and after notice and opportunity for hearing, a court may require more or different collateral on finding that the security originally deposited, pledged, or encumbered is insufficient to insure collection of the penalty sum of the bond.

5th Circuit Rule 707b requires a State's attorney to "call the attention of the court [to] any bond he deems to be deficient in any manner or insufficient to assure the presence of the defendant in court when required, or fully to protect the interests of the State of Maryland in the collection thereof in the event of default."

Discharge of Bond

Md. Rule 4-217(h) and (j)(1)(F)
*incorporated by reference in 7th Circuit Rule
714(h) and (l)(1)*

A clerk of court must discharge a bail bond if
the surety on the bond:

- has custody of a defendant.

- at any time before forfeiture, delivers, to the court in which the charge(s) is pending or the District Court commissioner for the county in which the charge(s) is pending, a copy of the bond and the amount of the fee or premium, if any, received for the bond.
- in accordance with the court's or commissioner's order, delivers the defendant to a detention facility.

- receives a receipt from the facility.

7th Circuit Rule 714(e)(2)(D) requires a clerk of court or District Court commissioner to send, to the 7th Circuit Bail Bond Commissioner, a record of a premium remitted by a surety insurer on premature surrender of a defendant.

7th Circuit Rule 714(l)(2) and (3) requires that a circuit court or the District Court send to

the 7th Circuit bail commissioner all premiums received by the court.

Md. Rule 4-217(h)

On motion of a surety who has had a bail bond discharged or of the person who paid a fee or premium on the bond and after notice and opportunity to be heard, a court may award to the surety an allowance for expenses in locating and surrendering the defendant and refund the balance to the person who paid it.

7th Circuit Rule 714(l)(4) requires a person seeking refund of a premium to present the motion to the 7th Circuit bail bond commissioner, who is to cause the motion to be filed in the criminal case and to refer the matter to the County Administrative Judge or designee for a ruling.

Md. Rule 4-217(j)(1)(A)

*incorporated by reference in 7th Circuit Rule
714(h)*

An unforfeited bail bond must be discharged if all charges to which the bond applies are steted within 10 years after the bond or collateral is posted.

Md. Rule 4-217(j)(1)(B)

*incorporated by reference in 7th Circuit Rule
714(h)*

If all charges to which a bail bond applies are disposed of by acquittal, the clerk of court must discharge the bond.

Md. Rule 4-217(j)(1)(B)

*incorporated by reference in 7th Circuit Rule
714(h)*

If all charges to which a bail bond applies are dismissed, the clerk of court must discharge the bond.

Md. Rules 4-217(j)(1)(B) and 4-247
*7th Circuit Rule 714(h) incorporates only
Md. Rule 4-217*

If all charges to which a bail bond applies are disposed of by nolle prosequi, the clerk of court must:

- discharge the bond.

- act, as needed, to recall or revoke any outstanding warrant or detainer that could lead to the arrest or detention of the defendant because of the charges.

Md. Rule 4-217(j)(1)(B)

*incorporated by reference in 7th Circuit Rule
714(h)*

If all charges to which a bail bond applies are disposed of by probation before judgment, the clerk of court must discharge the bond.

Md. Rule 4-217(j)(1)(C)

*incorporated by reference in 7th Circuit Rule
714(h)*

A clerk of court must discharge a bail bond if a defendant is sentenced:

- in the District Court and no timely appeal is taken.

- in the circuit court exercising original jurisdiction.
- on appeal or transfer from the District Court.

Md. Rule 4-217(j)(1)(D)
*incorporated by reference in 7th Circuit Rule
714(h)*

A clerk of court must discharge a bail bond if
the court revokes the bond under Rule 4-216.

Md. Rule 4-217(j)(1)(E)

*incorporated by reference in 7th Circuit Rule
714(h)*

A clerk of court must discharge a bail bond if a defendant is convicted and denied bail pending sentencing.

Md. Rule 4-217(j)(2)

On discharge of a bail bond and surrender of the receipt, a clerk of court must:

- return any collateral security to the person who deposited or pledged it.
- release the Declaration of Trust taken.

7th Circuit Rule 714(i) requires that, on discharge of a bail bond and surrender of the receipt , a clerk of court must return a cash deposit and release a Declaration or Deed of Trust or Consent to Lien.

7th Circuit Rule 714(g)(2) requires a defendant or uncompensated surety to pay all recordation and release fees before release of

a consent to lien.

Notice

5th Circuit Rule 707c requires the clerk of court to notify the surety and bondsman as to the times, dates, and places which have been assigned for arraignments, hearings, trials, and sentencings in criminal cases and criminal appeals.

Forfeiture

5th Circuit Rule 707d requires a State's attorney to move, in open court, to have the bail of a defendant forfeited on failure to appear and allows a State's attorney to request issuance of a bench warrant

A surety and bondsman also is required to appear if notice of the date, place, and time of the proceeding.

Md. Rule 4-217(i)(1)
*incorporated by reference in 7th Circuit Rule
714(j)(1)*

Whenever a defendant who is released on bond fails to appear as required, a court must order forfeiture of the bond and issuance of a warrant for the defendant's arrest.

5th Circuit Rule 707e requires a court to forfeit bail nisi on failure to appear after the surety and bondsman have been notified of the date, place, and time of th proceeding.

Md. Rules 4-217(i)(1) and 16-308b.2.
*7th Circuit Rule 714(j)(1) incorporates by
reference only Md. Rule 4-217(i).*

A clerk of court:

- must give prompt notice of a forfeiture and warrant to the surety, if any, and the State's Attorney.

- within 15 days after a forfeiture in a case involving a violation of the Maryland Vehicle Laws or other traffic law, a conviction for manslaughter or assault by means of an automobile, or a conviction for a felony involving the use of an automobile, must send to the Maryland Motor Vehicle Administration a certified abstract of the record on a form that the Administration provides.

- is not to report to CJIS a conviction entered by reason of a defendant's forfeiture of collateral or bond before trial on a citation offense.

Md. Rule 4-217(i)(3)
*incorporated by reference in 7th Circuit Rule
714(j)(1)*

A surety must satisfy a forfeiture order within 90 days or, if extended by a court on good cause shown, 180 days after a defendant fails to appear.

Md. Rule 4-217(i)(3)
*incorporated by reference in 7th Circuit Rule
714(j)(1)*

A surety may satisfy a forfeiture order by producing the defendant in court or by paying the penalty sum of the bond.

7th Circuit Rule 714(j)(2) allows a surety to avoid suspension by payment of the penalty sum, in full, within the time limits of Md. Rule 4-217(i)(3).

Md. Rule 4-217(h)(2)

A court must strike a forfeiture, wholly or partly, set aside a judgment, if any, entered on the forfeiture, and remit wholly or partly the penalty sum on a showing, by a defendant or surety, of reasonable grounds for the defendant's failure to appear.

7th Circuit Rule 714(k) bars a court from reinstating a forfeited bond without the explicit written consent of the surety and requires the 7th Circuit bail bond commissioner, on a court's request, to obtain the surety's written consent or refusal to reinstatement.

Md. Rule 4-217(i)(3)

If the State produces a defendant, a court must:

- require a surety to pay the State's expenses in producing the defendant.
- treat the forfeiture order as satisfied with respect to the remainder of the penalty sum.

Md. Rule 4-217(i)(4)

If a forfeiture order is not timely stricken or satisfied, the clerk of court immediately must:

- enter the order as a judgment:
 - ▶ in favor of the governmental unit that, by statute, is entitled to receive the forfeiture and

- ▶ against the defendant and surety, if any, for the amount of the bond's penalty sum, with interest from the date of forfeiture and costs including any costs of recording, less the amount, if any, deposited as collateral security.
- cause the judgment to be recorded and indexed in the civil judgment records of the circuit court for the county.

- prepare and send a true copy of the docket entries showing the entry and recording of the judgment against the defendant and surety, if any, to:
 - ▶ the Chief Clerk of the District Court.
 - ▶ the State's Attorney
 - ▶ the bail bond commissioner, if any.
 - ▶ the surety, if any.

5th Circuit Rule 707e requires a clerk “immediately and without further action of the court” to:

- *cause the forfeiture to be recorded and indexed in the judgment records of the court in favor of the State of Maryland against each bondsman and surety for:*
 - ▶ *the amount of the bail as forfeited.*
 - ▶ *interest from the date when the forfeiture*

became absolute.

- ▶ *costs accruing thereon.*
- *prepare and deliver to the State's attorney two true copies of the docket entries showing the forfeiture absolute and two complete photostatic copies of all of the bond instruments that the bondsman or surety gave to the clerk in connection with the bail.*

7th Circuit Rule 714(e)(2)(B) requires a clerk of court or District Court commissioner to send, to the 7th Circuit Bail Bond Commissioner within 10 days, a record of an absolute forfeiture.

Md. Rule 4-217(i)(4)

A State's Attorney must enforce a judgment.

5th Circuit Rule 707e2 requires a State's attorney immediately:

- to order execution to be issued for the recovery of the unsatisfied forfeiture, interest, and costs.*
- for the court and State, to seek from the Maryland Insurance Commissioner, to have the right of any corporate surety to do*

business in Maryland suspended or revoked and the revocation of its charter.

- *inform the licensing agency for bondsman, if any, in the county, as well as “each committing magistrate, and each Trial Magistrate or People’s Court within the county”.*

7th Circuit Rule 714(j)(3) requires a State's attorney to institute proceedings for foreclosure on a Declaration or Deed of Trust and provides for proceeds derived from the sale to be applied to the expense of foreclosure, penalty of the bond forfeited absolute, the amount needed to secure the penalty on all outstanding bonds filed by the surety until all are discharged, and license fee(s) due.

Md. Rule 4-217(i)(5)

If a defendant is produced in court after the period allowed, a surety may apply:

- for a refund of the penalty sum paid to satisfy a forfeiture, less any expenses allowed by law; or
- if no penalty sum has been paid, for the

judgment to be stricken, on payment of any expenses allowed by law.

Md. Rule 4-217(i)(6)

If a surety timely produces evidence, and a court finds, that a defendant is imprisoned outside Maryland and a State's Attorney will not issue a detainer and extradite the defendant, the court must:

- strike a forfeiture.
- return a bond or collateral.

Md. Rule 4-217(i)(6)

If, within 10 years after a bond or collateral is posted, a surety later produces evidence, and a court finds, that a defendant is imprisoned outside Maryland and a State's Attorney will not issue a detainer and extradite the defendant, a court must:

- strike a forfeiture.

- set aside the judgment, if any.
- return the bond or collateral or remit the amount paid as a penalty sum.

7th Circuit Rule 714(e)(2)(C) requires a clerk of court or District Court commissioner to send, to the 7th Circuit Bail Bond Commissioner within 10 days, a record of an order striking an absolute forfeiture.

Property Bond Acceptance

Md. Code
Criminal Procedure Article § 5-209

Except in the 7th Circuit, a compensated property bondsmen must provide a court with documentation as to ownership, tax status, and liens against the property posted.

As Ms. Reed noted provisions of *e.g.* Md.
Rule 4-217 may apply.

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