

REPORT OF THE BAIL SYSTEM TASK FORCE

Overview

The Honorable Robert M. Bell, Chief Judge of the Court of Appeals, formed the Bail System Task Force in response to a report in which the Judiciary's Internal Auditor expressed concern that the Judiciary's practices and procedures may not be effective in implementing the current laws governing the bail system in Maryland.

Due to the complexity of the bail system, involving District and Circuit Courts and other units of the Judiciary, as well as prosecutors, defense counsel, and other stakeholders in the criminal justice system, the Chief Judge solicited nominees for Task Force membership from *inter alia* the Conference of Circuit Judges, the Chief Judge of the District Court, the Attorney General of Maryland, the Conference of Circuit Court Clerks, District Court commissioners, the Maryland Association of Counties, the Maryland Bail Bond Association, Inc., the Maryland Insurance Administration, the Maryland Public Defender, the Maryland State's Attorneys' Association, and various bar associations. A roster of the Task Force as initially appointed appears as Appendix I.

The Administrative Order creating the Task Force [Appendix II] charged its members with reviewing the report of the Judiciary's Internal Auditor [Appendix III], studying all laws, practices, procedures, and internal controls pertinent to the deficiencies noted in the Internal Auditor's report or otherwise affecting the effectiveness of the bail system, recommending changes to rules or statutes needed to make the bail system effective, considering federal laws imposing reporting requirements or other duties on Judiciary personnel in connection

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with bail bonds, and making detailed recommendations for operational practices and procedures facilitating implementation, and internal control of, the bail system in an effective manner, including Statewide access by appropriate Judiciary personnel to timely electronic data on bail bondsmen and collateral and protocols for referral of defaults for enforcement, and entry and timely release of judgments.

The Task Force held its organizational meeting on December 17, 2003, at which the then Director of Internal Audit, Rhea R. Reed, laid out for the Task Force the problems and possible solutions with regard to the bail system, including a demonstration of a profession property bond data base. Staff provided the Task Force with a compilation of Maryland laws then relating to the bail system.

The Task Force met again on January 21, 2004, for a preliminary discussion of the Internal Auditor's recommendations. On March 3, 2004, the Task Force heard from the Honorable James K. Bredar, Magistrate Judge, United States District Court for the District of Maryland, about the federal system and from Lelia E. Newman, Bail Bond Commissioner, about the procedures for the 7th Judicial Circuit. On May 5, 2004, the Task Force met for discussion of proposals crafted by members. On August 11, 2004, November 10, 2004, and December 13, 2007, the Task Force met to discuss a draft report and alternative proposals. Among others, representatives of the Maryland Insurance Administration, Professor Douglas L. Colbert, and independent bail bondsmen attended one or more of the latter meetings.

In addition, the Chair, vice-chair, and other personnel of the Judiciary have met with the

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Attorney General and the Maryland Insurance Commissioner to discuss the feasibility of the recommendations of the Task Force, to positive effect.

Recommendations

Recommendation No. 1: Licensure of Property Bondsmen

There should be Statewide licensure of property bondsmen, by the Maryland Insurance Administration, comparable to licensure of other sureties.

Under the current law, property bondsmen are subject to regulation at the discretion of individual Judicial Circuits. Notwithstanding the authority to license bondsmen under the Maryland Rules and the duty to do so under certain public local laws, only the 7th Judicial Circuit actively licenses bondsmen.

The Task Force believes that Statewide licensure of property bondsmen would provide the underpinning for establishment of Statewide practices and procedures, make the option of property bonds available throughout the State, and allow better dissemination of information as needed to all components of the criminal justice system.

The Task Force considered whether Statewide usage of property bonds would exacerbate the problems identified in connection with property bonds or entail undue costs in money or other resources, as argued by representatives of the Maryland Bail Bond Association, Inc. The conclusion of the majority of the Task Force is that Statewide usage would reduce the potential for fraud occurring: through posting of “accommodation” bonds – *i.e.*, a bond that a defendant’s relative or friend secures with property for no compensation on a less than

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regular basis – in areas where property bondsmen are not regulated; through postings of bonds in excess of the surety’s authority; and through the defrauding of criminal defendants who, in good faith, use unauthorized persons as sureties. Accordingly, the Task Force declines to recommend elimination of professional property bondsmen, with or without “grandfathering” of currently licensed bondsmen.

The Task Force favored licensure of property bondsmen – as opposed to the less stringent registration. Fortunately, the Maryland Insurance Administration has agreed to undertake licensing responsibility and has prepared appropriate legislation, to which the Task Force subscribes.

Conforming changes to the Maryland Rules and amendments to the Maryland Insurance Administration provisions as to bail bondsmen in the Code of Maryland Regulations should be developed through the Advisory Committee (*see* Recommendation No. 7).

The draft legislation includes an exemption for individuals acting as accommodation sureties, up to three times each year, for family members within the third degree of consanguinity under the civil system – but not “friends”. The Task Force would suggest, however, that data on accommodation bonds be forwarded to the Maryland Insurance Administration, to ensure against execution of accommodation bonds in excess of three per year or for non-family members. It is contemplated that a list of persons executing three or more accommodation bonds would be available to court personnel who could verify licensure if asked to accept another such bond. Additionally, an individual executing such a bond should state under oath

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the relationship with the defendant.

As to “accommodation” bonds, the Task Force recognizes the need for ownership and equity to be checked at the time of posting and for collection, in the instance of accommodation, as well as other, bonds. The simple solution on that level is to provide for an equity verification process before or shortly following an accommodation property posting. See Recommendation Nos 2 and 5.

Recommendation No. 2: Standardization of Procedures

Standard procedures for acceptance and processing of bonds should be formulated for all courts.

The Internal Auditor recommended, and the Task Force agrees, that Statewide rules, policies and procedures, eliminating the differences between District and Circuit Courts and among the Circuit Courts, are essential to development of an effective bail bond system.

Currently, there exist a number of obsolete, conflicting, ignored, or otherwise inappropriate statutes, public local laws, regulations, and rules governing bail bonds and corporate and property bondsmen. Additionally, a number of written and *ad hoc* practices pertain to such matters as the acceptance of bonds by individual clerks and the reporting of events in connection with bonds and forfeitures.

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The Task Force also is proposing that, contingent on implementation of Recommendation No. 1, the Judiciary's Internal Auditor and the Maryland Insurance Administration develop a detailed operating manual to govern procedures for timely communication by the Judiciary and Administration.

Recommendation No. 3: Uniform Data System

A comprehensive, unified system of bail bond information should be accessible to Judiciary personnel involved in the bail bond process.

Accurate, complete, and current data such as the net equity available on collateral and verification of ownership and value of collateral posted by accommodation sureties are critical to a functional bail system.

The Task Force believes that licensure by a single governmental entity – the Maryland Insurance Administration – and regular dissemination of a current licensee roster will reduce the instances in which a commissioner or clerk accepts a bond not enforceable because of, *e.g.*, encumbrances on the pledged property.

In instances of accommodation bonds, however, procedures should be set in place whereby the commissioner or clerk being offered the bond will do a preliminary check of online Land Records and SDAT records to verify ownership, encumbrances on the property and assessed value. Subsequently, the bail bond commissioners or the office of the Chief Clerk of the

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District Court, as appropriate, would confirm net equity available post-acceptance and notify the appropriate circuit administrative judge or Chief Judge of the District Court if collateral is not sufficient.

The Task Force hopes that, contingent on adoption of Recommendation No. 1, the Maryland Insurance Administration and the Judiciary can cooperate in developing an electronic system for transfer of information about licensees, defaults by licensees, unauthorized practice, and execution of bonds, with the aim of ensuring compliance with the laws regulating bondsmen and bail bonds. To this end, the Administration and Judiciary may wish to explore the feasibility of issuing debit cards to licensees embedded with the applicable limitations on execution of bonds. Such usage in conjunction with a debit machine located in a District Court commissioner's office could reduce the possibility that a commissioner would accept a bond executed by unauthorized personnel or a bond in an amount exceeding the bondman's limitations as imposed by the corporate or property bondsman and may afford surety insurers greater control over agents by facilitating the withdrawal of bond writing authority.

Debit machines should allow same-day transmittal of data between the Administration and Judiciary as to licensees. Procedures would be required for the transmittal of information about bonds executed by non-licensees.

Exchange of data can be enhanced with appropriate training of personnel as to consistent and correct entry of information into the system and timely updates.

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Recommendation No. 4: Judiciary Personnel

Each of the eight judicial circuits should have a bail bond commissioner position modeled on the 7th Circuit's position.

As noted above, only the 7th Judicial Circuit has a formal bail bond commissioner position, albeit that every judicial circuit had the authority to create such a position. The 7th Circuit bail bond commissioner is concerned primarily with licensing of property bondsmen and receipt of information from, and dissemination of information to, District Court commissioners. The Task Force believes that each judicial circuit should have a comparable position. Licensure would not be among the duties; rather, bail bond commissioners would carry out the critical component of data sharing and verification of data.

The Task Force recognizes that not all of these positions need be full-time but emphasizes that personnel will need to be trained as to the procedures governing bail bondsmen and bail bonds.

Recommendation No. 5: Recordation and Release

Effective notice of the State's interest in collateral depends upon recordation of Declarations of Trust or Deeds of Trust and prompt release on discharge of a bond.

Contingent on implementation of Recommendation No. 1, the Task Force believes that the

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licensure procedures for property bondsmen should include recordation of the deeds of trust as to property registered for use as collateral. Data on declarations of trust executed by accommodation sureties should be forwarded to the Maryland Insurance Administration. Whether recorded before or after forwarding depends on the speed with which recordation can be accomplished. Of equal importance is the timely notation of forfeiture and the timely release of bonds that have been satisfied and forfeitures that have been stricken, and the Task Force would urge the Judiciary and Maryland Insurance Administration to incorporate exchange of this data in any automated system design.

Recommendation No. 6: Enforcement

Court personnel, the Attorney General, and the Maryland Insurance Administration should coordinate to ensure effective enforcement of the laws governing the bail system.

The Task Force believes that enforcement is a key component to an effective bail system. As noted above, consolidation of licensure functions within the Maryland Insurance Administration is expected to enhance enforcement by providing administrative remedies in addition to the criminal penalties now available. Additionally, the Task Force contemplates transmittal of data enabling the Administration to monitor accommodation sureties to ensure against unauthorized provision of bail bond services and to enforce forfeitures.

As a matter of equity, the Task Force thinks that there also should be enforcement of bond forfeitures in instances in which the defendant posts a percentage of the penalty amount.

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Additionally, the Task Force believes that enforcement of defaults should be transferred from individual State's attorneys to the Attorney General, with authority for referral for collection given to the State Collection Unit. Historically, State's attorneys have shown a lack of will in enforcement of defaults – particularly with regard to accommodation bonds. The Task Force concludes that this lack of enforcement denigrates the bail process.

Recommendation No. 7: Implementation

The Chief Judge of the Court of Appeals, in conjunction with the Maryland Insurance Commissioner, should form an advisory committee to afford coordination in implementation of the recommendations in this report.

The Task Force recognizes the complexity of carrying out various recommendations and, therefore, urges the formation of a committee – composed of representations of appropriate entities – to advise on implementation those recommendations.

Conclusion

The Task Force believes that the bail system needs to be simplified as set forth in this report and expresses its appreciation to the Chief Judge for forming the Task Force.