

Dissent to Report of the Bail System Task Force

Implementation of the central Recommendations contained in the majority Report of the Bail Bond Task Force (the “Task Force”) will be expensive, inefficient, administratively burdensome, and possibly contrary to the provisions of the Insurance Article of the Maryland Code, all without meaningful benefit to the citizens of Maryland. Moreover, the Task Force failed to address critical issues and details relevant to implementing its Recommendations. Accordingly, I dissent.

I. Preliminary Matters.

Before turning to the substantive issues relative to the Recommendations, three (3) circumstances bear mentioning because they unfortunately undermine the significance and validity of the Task Force’s work product:

1. **Endorsement of Legislation by the Task Force that it had not reviewed.** Remarkably, the majority Report embraces and endorses proposed legislation that was neither presented to, nor reviewed by, the Task Force. See Report, page 5, which provides as follows:

“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.**” (emphasis added)

In advance of the last meeting of the Task Force, the draft majority Report was circulated. Upon reading the draft report, among other things, I requested a copy of the “appropriate legislation,” which I was told had been drafted by representatives of the Maryland Insurance Administration (the “MIA”) and the Judiciary.¹ Inexplicably, the request to review the proposed legislation was refused and, *despite a motion made at the last Task Force meeting, the majority Report was adopted with the “subscribing” language for the unseen legislation.* Why the proposed legislation was drafted without the participation of the entire Task Force is as mysterious as it is disturbing. Moreover, this exclusion has truly frustrated the collaborative intent and purposes that were the foundation for the formation of the Task Force.²

¹ It seems clear that the drafter of the majority Report had had an opportunity to either participate or review the proposed legislation. See, e.g., Report at page 5 which provides that “[t]he 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’.”

² Ironically, at the initial meeting of the Task Force, the Honorable James N. Vaughn, Chair of the Task

2. Failure to give due consideration to all factors, including any change in circumstances, after a three (3) year hiatus in Task Force meetings. As recited in the majority Report, the Task Force held its organizational meeting on December 17, 2003 and then met four (4) times in 2004. *Inexplicably, no further meetings were scheduled or held from November, 2004 to December, 2007 – a three (3) year plus hiatus.* The Task Force did not perform any analysis or review of bail related changes that had taken place in the three (3) years since the last meeting. Moreover, there was no discussion of changes in bail at the December, 2007 meeting. Consequently, the majority Report is based on outdated information and thus of questionable value. The better practice would have been to issue a report shortly after the November, 2004 meeting or to have conducted further analysis after the December, 2007 meeting.
3. Failure to have a Quorum to adopt the Task Force Report. While purely procedural in nature, a review of the appointed Task Force members discloses that a true quorum was not present for the adoption of the Task Force Report, arguably affecting its validity. Because of the three (3) year hiatus between the November, 2004 meeting and the December, 2007 meeting, several of the appointed Task Force members had “moved on” to different positions within government or retired. As a result, several members did not attend the December 2007 meeting, but so-called “designees” were dispatched. Nothing in the creation of the Task Force appears to allow for members to appoint others to vote for them. Furthermore, no written proxies were ever presented.

II. Substantive Discussions.

The majority Report posits seven (7) recommendations:

1. *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.

2. *Recommendation No. 2: Standardization of Procedures*

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

Force stated: “The Task Force was made as diverse as possible, in light of the multiple agencies and entities with an interest but relatively small so as to be workable.” See, Task Force Minutes, December 17, 2003 Meeting, page 2.

3. *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.

4. *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.

5. *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.

6. *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.

7. *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.

At first blush, many of the Recommendations seem sound. However, as is always the case, the "devil is in the details" and when the details -- particularly, the associated costs -- of implementation are analyzed, the imprudence of the primary Recommendations becomes self-evident.

A. Recommendations 1 and 4 should NOT be adopted.

Central to the majority Report are:

(i) Recommendation 1 – captioned “Licensure of Property Bondsmen” and providing that “[t]here should be statewide licensure of Property Bondsmen, by the Maryland Insurance Administration comparable to licensure of other sureties;” and

(ii) Recommendation 4 – captioned “Judiciary Personnel” and providing that “[e]ach of the eight Judicial Circuit should have a Bail Bond

Commissioner position modeled on the 7th circuit's position.”

Both Recommendations are premised on the ill conceived notion of expanding statewide the utilization of compensated property bondsmen for the posting of criminal bail bonds, *comparable to other sureties*.

Creating a statewide licensure of Property Bondsmen by the MIA, comparable to the licensure of other sureties is simply unsound. The term “Property Bondsmen” generally refers to those individuals that (i) charge a fee for the posting of bail bonds utilizing real property pledged in favor of the State or the Judicial Circuit as the collateral security, (ii) meet the qualifications imposed by, and are subject to, the local rules (if any) in the Judicial Circuit where the Property Bondsmen operates (See, e.g. 7th Circuit Rules 714 and 714A), and (iii) are enrolled on the District Court list.³

Based on my twenty-five (25) years of bail bond experience in Maryland, I know that substantially all of the Property Bondsmen, and property bonds posted by Property Bondsmen, are limited to the 7th Judicial Circuit (Calvert, Charles, Prince George's and St. Mary's County). The most recent District Court statistics,⁴ which the Task Force neither sought nor analyzed, support this conclusion. According to Leila Newman, Bail Bond Commissioner for the 7th Judicial Circuit, there are *thirteen (13)* truly active, liable Property Bondsmen in the 7th Judicial Circuit.⁵ Given the most recent District Court statistics from 2006 and 2007 (which disclose, amongst other things, that more than 50% of the property bonds statewide are posted in the 7th Judicial Circuit), and my industry experience, it is safe to say that there are no more than *twenty-five (25)* truly active Property Bondsmen in the State.

Moreover, the financial requirements to become a Property Bondsmen in the 7th Judicial Circuit are minimal at best. Bail Bond Commissioner Newman has advised that, in order to satisfy the financial prerequisite, one only needs (i) a piece of real property, (ii) free and clear of liens and encumbrances, (iii) having a full cash value equal to or greater than \$62,500. That \$62,500 (or more) in equity entitles the Property Bondsmen

³ According to Polly Harding at District Court Headquarters, the District Court list of Property Bondsmen is simply informational. It contains anyone who has ever been treated as a Property Bondsmen, notwithstanding whether or not that person is currently active. Indeed, some of those listed among the active on the District Court list are individuals who are absolutely no longer in business and at least one is dead. As such, little or no reliance can be placed on that list in terms of truly active Property Bondsmen.

⁴ According to District Court of Maryland statistics for 2007, 54% of all property bonds (5,063/9,455) posted in the District Court of Maryland statewide (which also includes property bonds that would be posted by family members, instead of through a Property Bondsmen) were posted in the 7th Judicial Circuit (Districts 4 and 5 per District Court statistics), whereas the total bonds posted in the 7th Judicial Circuit, compared to all Judicial Circuits, was only 19% (14,162/76,786). Similarly, in 2006, 49% of all property bonds (3,834/7,848) posted in the District Court of Maryland statewide were posted in the 7th Judicial Circuit (Districts 4 and 5 per District Court statistics), whereas the total bonds posted in the 7th Judicial Circuit, compared to all Circuits, was again only 19% (13,396/73,326). Bail Bond Commissioner Newman estimates that the vast majority (at least 90%) of property bonds written in the 7th Judicial Circuit are bonds written through Property Bondsmen.

⁵ According to Bail Bond Commissioner Newman, those thirteen (13) active Property Bondsmen in the 7th Judicial Circuit can each have up to three (3) designated individuals (meeting the requisite local rule qualifications), who can bind that Property Bondsmen and his pledged real property, provided the Property Bondsmen files a qualifying power of attorney with her office so designating the individual.

to maintain open liability for bonds posted by a multiple of four (4).⁶ Thus, if you had \$62,500 in equity, you could maintain open liability up to \$250,000 (\$62,500 x 4 = \$250,000). Ms. Newman further advised that Property Bondsmen licensed in the 7th Judicial Circuit cannot post bonds elsewhere (See Task Force Minutes, March 3, 2004, page 3).

1. The Cost of Implementing Recommendations 1 and 4 Would be Several Million Dollars.

First and foremost, the majority Report of the Task Force ignores the costs of implementing Recommendation 1, and its necessary corollaries. When tasked with estimating the costs of achieving computerization of the statewide licensing scheme, MIA representative, Thomas Raimondi, Esquire, “quoted an estimated \$3.5 million and two years to achieve computerization of the Statewide licensing scheme previously considered” (See Task Force Minutes, November 10, 2004, page 5).⁷ Additional cost would be incurred by the court system in hiring -- and supporting with the requisite staff -- eight (8) Bail Bond Commissioners across the State.⁸ While the *first* draft of the majority Report, *dated June 21, 2004*, at least acknowledged that the creation of the required data systems will involve “costs,” the final majority Report entirely ignores any discussion of the costs.

2. Property Bondsmen are not comparable to Insurance Companies.

Apart from the costs, fundamentally, Property Bondsmen are *not* “comparable to other sureties” -- namely, insurance companies holding a Certificate of Authority issued by the MIA. Indeed, the use of property bonding through Property Bondsmen is a historic relic, which in Maryland is almost entirely limited to the 7th Judicial Circuit. If implemented, Recommendation 1 essentially will create a group of “quasi” insurance companies based on those limited number of people currently operating as liable Property Bondsmen, enabling them to post bonds throughout the *entire* state (unlike the current state of affairs).⁹ Moreover, given the ability to operate statewide and assuming the

⁶ Based on the compiled local rules and public local laws presented to the Task Force, the 7th Judicial Circuit is unique in providing for a “multiple.” Indeed, Section 5-209 of the Criminal Procedures Article of the Maryland Code is silent as to any “multiple,” but by its own terms does not apply in the 7th Judicial Circuit.

⁷ The majority Report even suggests the issuance of debit cards to licensees and envisions debit machines to allow same day transmittal of data between the MIA and Judiciary. See Report at page 8. While certainly forward thinking, the notion that such a debit card type system could be created without tremendous costs is simply unrealistic. This is especially true given the numerous incompatible systems already in place with respect to the court’s systems. For example, Task Force member, Patrick Loveless, a District Court Commissioner in Prince George’s County, informed the Task Force that “commissioners currently must access 26 different computer systems with 14 passwords and computer numbers, to ascertain criminal history information.” See Task Force Minutes, March 3, 2004 Meeting, page 5. Additionally, Task Force invitee, Lelia Newman, advised the Task Force that “currently the Prince George’s County Circuit Court and the District Court computers do not communicate well.” *Id.* at page 2.

⁸ The operations of the Bail Bond Commissioner’s office in the 7th Judicial Circuit require one (1) full time employee in addition to the actual Bail Bond Commissioner.

⁹ As alluded to above, the devil is certainly in the details, and the Task Force has failed to address the details. Indeed, the Minutes suggests that Property Bondsmen would be limited to posting property only in the judicial circuit in which the pledged property is located. See Task Force Minutes, November 10, 2004 Meeting, page 7, which provide as follows: “Judge Long again asked whether property is to be posted on in

nominal real property equity required by the 7th Judicial Circuit, this circumstance will undoubtedly lead to a tremendous number of others seeking to operate as Property Bondsmen, which will increase costs and administrative burdens on the MIA and court personnel dealing with bail bond matters.

As Kathleen Birrane, Esquire, then Principal Counsel to the MIA, advised the Task Force: “[A]cting as a surety on a property bond for a fee may be the business of insurance” And “[i]f property bondsmen are doing insurance business, they should be regulated as such.” While the 7th Judicial Circuit does have some local rules regulating Property Bondsmen, they are far from comprehensive and, as previously noted, require nominal equity and no substantial financial wherewithal. Moreover, licensing and regulating Property Bondsmen would necessitate significant on-going operating expenses (in addition to the “start-up” expense that would be required to create and operate the statewide licensure system envisioned), and require significant administrative personnel to administer.

Contrariwise, insurance companies are already subject to a plethora of financial and operational statutes, regulations, and directives, all of which are intended to insure financial solvency, proper payment of claims, and protection of consumers. Without the implementation of considerable regulations dealing with (i) the financial and personal qualifications of each Property Bondsmen, including a bona fide appraisal and proper title search of each collateral property, an analysis of the individual’s financial strength, and the imposition of financial solvency reporting requirements such as audited financial statements, and (ii) the requisite operational and enforcement considerations, including but not limited to rate filings, record keeping requirements, appropriate ratios, audits, and the like, any proposed system will undoubtedly create more problems than it solves. Moreover, implementation will necessarily require the hiring of competent oversight and enforcement personnel to insure and confirm compliance by the Property Bondsmen, not to mention the increased administrative burden that will result to District Court Headquarters personnel, particularly in dealing with an increased number of “operating sureties” in connection with the bi-monthly Absolute Bail Forfeiture List.¹⁰

3. Property Bondsmen should be phased out.

Instead of creating a tremendous system-wide bureaucracy with all of the requisite costs and inherent problems, a more sensible proposal is simply to “phase out”

the circuit where located. Ms. Reed thought the proposal was for county postings. **The recommendation is for registration that is effective Statewide but that allows posting of property only in the circuit where the property is located.**” (emphasis added). Unfortunately, the majority Report is silent on this point.

¹⁰ In 2006, with the support of the bail bond industry, Insurance Article Section 21-103, captioned, “Failure to pay bail bond judgment; penalties” was enacted. This Section requires the District Court Clerk to notify the Insurance Commissioner in writing of any surety insurer that fails to resolve or satisfy a bail bond forfeiture by the prescribed deadline and further subjects those insurers to penalties under Insurance Article 4-113. Those penalties can be substantial and can lead to revocation of an insurer’s Certificate of Authority. As such, it provides significant incentive for insurers to pay all forfeitures in a timely manner. Query: whether the provisions of Section 21-103 will apply to the Property Bondsmen if the Task Force Recommendations are implemented?

Property Bondsmen altogether,¹¹ with those currently properly qualified in their respective Judicial Circuits being “grand fathered” to continue posting bonds to the extent now authorized, provided they continue to adhere to and satisfy all other requirements prescribed by law. As noted above, there are at best twenty-five (25) truly “active” Property Bondsmen.¹²

Creating the bureaucracy that would be necessary to license, supervise and regulate this limited number of Property Bondsmen is akin to creating a super highway for twenty-five (25) cars; regulation of Property Bondsmen would be more efficient and effective, but at what cost and for what real benefit? Instead, “grand fathering” these individuals under the existing rules, with a phasing out of compensated property bond postings altogether is more sensible.

4. Separate Bail Bond Commissioners would not provide consistency or efficiency.

Even if there was some meaningful benefit flowing from creating a vast, expansive, and expensive statewide licensing and regulatory scheme for Property Bondsmen, the idea of have *eight (8) separate* Bail Bond Commissioners is not only inefficient (both on a cost and production basis), but will lead to inconsistencies throughout the process. In fact, the draft majority Report, dated June 21, 2004, had provided that “Bail Bond Commissioner positions in individual Judicial Circuits should be eliminated and a central position in the Judiciary headquarters should be [created with] expanded duties.”¹³ The creation of a central position at Judicial Headquarters was also a

¹¹ According to the Minutes, Washington County has already phased out the posting of property bonds by Property Bondsmen. See, Task Force Minutes, March 3, 2004 Meeting, page 3, where it is noted that “in Washington County for example, 1 property bondsman had been allowed to continue business until retirement, at which time the court implemented an informal policy against property bonds.”

¹² The District Court records -- which, as noted above, have never been purged -- list 132 individuals as Property Bondsmen. In reality, there are far less operating Property Bondsmen, as many of those listed individuals are relatives of the primary Property Bondsmen and have simply been registered for convenience sake or, in several instances, are dead. Surnames such as “Pantazes,” “Harris,” “Bernstein,” and “Weigand” appear repeatedly throughout the District Court list. Moreover, the referenced pledged property for those relatives is invariably the same for all parties. In contrast, the District Court records show a total of 1,146 individuals as appointed surety insurance agents, for the 23 insurance companies authorized on the District Court list. Like the information related to Property Bondsmen, the District Court list is cumulative (without purging). Additionally, surety agents can be appointed by more than one insurance company, and thus some duplication is in the 1,146 count. Nonetheless, it is clear from all available information that the vast majority all of the bonds in the State are posted by surety insurance agents, who are well regulated by the MIA with the administrative licensing and enforcement scheme in place and well established.

¹³ The discussion relating to that Recommendation in the June 21, 2004 draft provided as follows:

“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, with transfer of licensing responsibility to the Maryland Insurance Administration, a separate bail bond position for each circuit no longer could be justified. Rather, the Task Force believes that the critical component of data sharing, currently assigned

summary recommendation made by Rhea Reed, the Director of Internal Audit for the State of Maryland Judiciary in her Memorandum captioned "Audit Report – Bail Bond Special Review," which was the work product that gave rise to the creation of the Task Force.

Without explanation, the centralization concept was abandoned, and in its place the notion of eight (8) separate Bail Bond Commissioners, modeled on the 7th Circuit's position, advanced. The decentralization concept is simply ill-advised. While the majority Report seems to downplay the costs, the reality is that eight (8) separate Bail Bond Commissioners would be costly, undermine the principle of uniformity throughout the State and, in my view, result in a less efficient and effective structure.

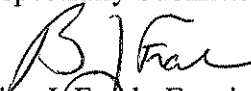
B. Recommendations 2, 3, 5, 6, and 7 are valid.

Excepting those aspects dealing with Recommendations 1 and 4, the remaining Recommendations -- Recommendations 2, 3, 5, 6 and 7 -- have merit and should be implemented, with all interested persons in the bail bond system having an opportunity to provide input.

III. Conclusion.

For all the reasons stated above, I dissent to the majority Task Force report. Notwithstanding my dissent, I would like to express my appreciation to the entire Task Force, as well as to the Chief Judge, for the opportunity to participate in this undertaking.

Respectfully Submitted,


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Task Force Member

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primarily to the Chief Clerk of the District Court, can best be accomplished by consolidation of data sharing coordination in a single Judiciary position and sees no reason at this time to move the duties from the Chief Clerk's office.

The Task Force recognizes that every court will need to have personnel sufficiently trained as to the procedures governing bail bondsmen and bail bonds."