



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

ROSALYN W. FRIERSON  
DIRECTOR

1015 SUMTER STREET, SUITE 200  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1800  
FAX: (803) 734-1355  
E-MAIL: rfrierson@sccourts.org

**MEMORANDUM**

TO: Summary Court Judges  
Clerks of Court  
Circuit Court Judges  
Solicitors

FROM: Robert L. McCurdy, Senior Staff Attorney

RE: Bonding Issues

DATE: July 25, 2008

**Effective June 25, 2008**, Act No. 346 of 2008 amended several sections of the Code concerning bonding issues. A brief description of those changes is provided below. The bill may be accessed at [http://www.scstatehouse.net/sess117\\_2007-2008/bills/577.htm](http://www.scstatehouse.net/sess117_2007-2008/bills/577.htm).

**Section 3** of Act 346 amended §38-53-50 relating to relief of a surety from bond. Subsection (A) of the statute is amended by adding that a surety filing a motion and an affidavit to be relieved on a bond must pay the clerk of court a fee of \$20.00 for the filing of the motion. The fee shall be retained by the clerk for use in the operation of the clerk's office to cover the costs of copies of the motion required by the surety. If the charge is within the jurisdiction of magistrate or municipal court, the \$20 fee should be paid to the court and forwarded to the county/municipal general fund.

Subsection (B), regarding immediate incarceration of the defendant, has been amended to allow the surety, after recommitting a defendant to a detention facility for a violation or eminent violation of a condition of the bond, to file with the detention facility and court within three days of recommitment, an affidavit clocked in by the clerk. The affidavit must state facts to support the surrender of the defendant for good cause. The surety should then file with the court a motion to be relieved on the bond.

Subsection (C) now provides that if a defendant is incarcerated by the surety or law enforcement as a result of a bench warrant, the surety shall file an affidavit with the court 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 bail bond stated in the bench warrant. Once the affidavit has been filed, the surety is relieved of all liability on the bail bond by the court.

I have attached guidelines concerning the amended procedure for a bondsman to be relieved as surety on a bond. Also attached for bondsmen's use is SCCA/636, Affidavit of Surrender of Defendant by Surety, and SCCA/635, Motion to be Relieved on Bond.

**Section 4** of Act 346 amended §38-53-70 relating to the issuance of a bench warrant upon defendant's failure to appear for trial. The amendment requires that upon issuance of a bench warrant for failure to appear, the court shall make available at the clerk's office for pickup by the surety a true copy of the bench warrant within seven days of its issuance. The bill also amends that statute to provide the surety 90 days (as opposed to 30) to apprehend and recommit a defendant after the issuance of a bench warrant for failure to appear. After 90 days, and the defendant has not been recommitted, estreatment proceedings may be commenced.

Should you have questions concerning these matters, please contact this Office.

RLM/amh

**A. General Procedure For Surety To Be Relieved On Bond For Good Cause (Non-emergency/Non-Incarceration), §38-53-50(A)**

1. Surety must file with the clerk of court<sup>1</sup> a motion to be relieved on the bond and pay clerk \$20 filing fee<sup>2</sup>.
2. Surety must serve copy of motion on defendant, his attorney, and the solicitor/prosecutor.
3. Court must schedule and hold hearing with notice given to all parties, including surety.
4. If the surety is relieved by order of the court, a new undertaking must be filed with the appropriate court in order to secure the subsequent release of the defendant. The undertaking must contain the same conditions included in the original bond, unless conditions have been changed by the court. Notice of court action should be provided to the detention facility.
5. If the court refuses to relieve the surety from the bond, the defendant should be discharged under the original undertaking, unless amended by the court.

**B. Procedure Where Surety Incarcerates Defendant To Prevent Imminent Violation Or Violation Of Specific Term(s) Of Bond, §38-53-50(B)**

1. Surety may take defendant to the appropriate detention facility for holding until the court orders that the surety be relieved.
2. Surety must provide detention facility with an affidavit (non-clocked) stating the facts to support the surrender of the defendant for good cause (to prevent imminent violation of specific term(s) of bond or a violation has been committed). Detention facility must hold the defendant with the non-clocked affidavit until surety provides a court clocked affidavit.
3. Nonpayment of fees alone is not sufficient cause to warrant immediate incarceration of the defendant.
4. Within three (3) business days following recommitment, surety must file with the court the affidavit as described in #2 above. Clerk must clock the affidavit.
5. When the affidavit is filed with the clerk, the surety must also file motion to be relieved on the bond, along with a \$20.00 filing fee.
6. Surety must immediately provide a clocked copy of the affidavit to the detention facility. If surety fails to provide detention facility with clocked copy of the affidavit within three (3) business days, detention facility should contact the court for instruction. Surety non-compliance may result in discharge of defendant on original undertaking.
7. Court must promptly hold a hearing on the issue with notice given to all parties, including the defendant, prosecutor, and surety.
8. If the surety is relieved by order of the court, a new undertaking must be filed with the

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<sup>1</sup> Documentation shall be filed with Clerk of Circuit Court if defendant charged with General Sessions charge(s). Documentation shall be filed with summary court if charged with summary level offense.

<sup>2</sup> Clerk of Circuit Court retains \$20.00 for use in operation of office. Summary court shall forward \$20.00 to local treasurer for deposit into County/Municipal General Fund.

court in order to secure the subsequent release of the defendant. The undertaking must contain the same conditions included in the original bond, unless conditions have been changed by the court. Notice of court action should be provided to the detention facility.

9. If the court refuses to relieve the surety from the bond, the defendant should be discharged under the original undertaking, unless amended by the court.

**C. Procedure Where Defendant Is Incarcerated By The Surety Or Law Enforcement As A Result Of A Bench Warrant, §38-53-50(C)**

1. The surety shall file an affidavit with the court stating that the defendant is incarcerated in the appropriate detention facility as a result of the bench warrant. Surety must include in the affidavit the defendant's violation of the specific term(s) of the bond as stated in the bench warrant.
2. Upon filing the affidavit, the surety is immediately relieved of all liability on the bail bond. Surety is not required to file a motion to be relieved and is not required to pay a filing fee.
3. Defendant remains in custody. A new undertaking must be filed with the court in order to secure the subsequent release of the defendant. The undertaking must contain the same conditions included in the original bond, unless conditions have been changed by the court. Notice of court action should be provided to the detention facility.

STATE OF SOUTH CAROLINA, )  
 )  
COUNTY/MUNICIPALITY OF \_\_\_\_\_ )

IN THE COURT OF \_\_\_\_\_

AFFIDAVIT OF SURRENDER OF  
DEFENDANT BY SURETY

STATE OF SOUTH CAROLINA )

Amount of Bond: \_\_\_\_\_

vs. )

S.S.N.: \_\_\_\_\_

D.O.B.: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Defendant. )

Date of Bond: \_\_\_\_\_

IN RE: \_\_\_\_\_ )

Surety )

PERSONALLY APPEARED BEFORE ME, the undersigned surety/deponent, who being duly sworn, states that he is a duly authorized representative of \_\_\_\_\_ Surety Company, who is contractually acting as surety for the above named defendant on the following ticket warrant indictment number(s) and charges. \_\_\_\_\_

Defendant was incarcerated by surety/deponent for a violation or imminent violation of a specific term(s) of the bail bond as sworn to below. **Surety/deponent states under penalty of perjury that the information contained in this Affidavit constitutes good cause for the immediate incarceration of defendant.**

Defendant was incarcerated by  surety/deponent  law enforcement as the result of a bench warrant for a violation of a specific term(s) of the bail bond as stated in the bench warrant and sworn to below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Attach additional sheets if necessary.)

Sworn to and Subscribed before me )  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. )

\_\_\_\_\_  
Signature of Surety/Deponent

\_\_\_\_\_  
Notary Public for South Carolina )

\_\_\_\_\_  
Surety Company

My Commission expires \_\_\_\_\_ )

STATE OF SOUTH CAROLINA )  
COUNTY OF \_\_\_\_\_ )

IN THE COURT OF \_\_\_\_\_ )

) WARRANT/TICKET/  
) INDICTMENT # \_\_\_\_\_ )

STATE OF SOUTH CAROLINA )

) AMOUNT OF BOND \_\_\_\_\_ )

-vs- )

DEFENDANT )

) SSN \_\_\_\_\_ DOB \_\_\_\_\_ )

) DATE BOND POSTED \_\_\_\_\_ )

IN RE: )

MOTION TO BE RELIEVED  
ON BOND

SURETY )

PLEASE TAKE NOTICE that \_\_\_\_\_  
Surety, moves before this Court, such motion to be heard on the date and time indicated below, requesting  
an Order to be Relieved on the bond of the above named defendant.

Surety moves to be relieved on the bond based on the following grounds and facts as stated in the attached  
affidavit (**affidavit required**):

- 1. To prevent defendant from committing an imminent violation of specific terms of the bail bond.
- 2. The defendant has violated any one of the specific terms of the bond.
- 3. Other: (specify) \_\_\_\_\_

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
SURETY

**ORDER OF COURT**

The above motion is hereby  GRANTED  DENIED.  
The bond shall be set at \_\_\_\_\_  remain as is.

Defendant to be  committed  released under the above  
charge(s).

Date and Location: \_\_\_\_\_ County, South Carolina,

JUDGE \_\_\_\_\_

**NOTICE OF HEARING**

Please take notice that a hearing on  
the above motion is scheduled at the

located at \_\_\_\_\_  
at \_\_\_\_\_ o'clock on \_\_\_\_\_

If you do not appear, the hearing will be  
held in your absence.