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Via email only
Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Bail Judge Subcommittee Report
Hughes Justice Complex
Trenton, New Jersey 08625

Dear Judge Grant:

Kindly accept this letter with respect to the proposed new rules and guidelines regarding bail forfeitures. I have been representing bail bondsmen, bail agencies and surety companies in New Jersey for over 35 years. I appear in every vicinage Superior Court as well as many Municipal Courts that handle these matters, and have filed numerous cases over the years in the Appellate and Supreme Courts. My review of the new AOC forfeiture guidelines reveal they are not only grossly unfair and punitive, but violate long-standing New Jersey policy, case law and statutes. I have heard more than once from Judges and AOC representatives that bondsmen are "getting away with murder." The sole purpose of the new rules and guidelines is simply to get more money from sureties. The centuries old concept "interest of justice" in bail forfeiture proceedings no longer appears to be the rule of law, overridden by financial concerns. More specifically:

1. they fail to consider the amount of the bond in determining the amount of remission, as now required. As stated in State v. delaHoya, 359 N.J.Super. 194 (2003):

"we are also satisfied that the amount of the posted bail is a factor to be considered. That is to say, in determining the amount of a partial remission, the court should take into account not only an appropriate percentage of the bail bond but also its quantum. Illustratively, fifty percent of a \$100,000.00 bond is a very different matter from fifty percent of a \$5,000.00 bond." 359 N.J.Super. at p. 199.

2. They are merely punitive and contravene the very purpose of the

bail, namely, providing an incentive to the surety to take steps to recapture a fugitive, and cause sureties to be overcautious in posting bail (which impairs an accused's constitutional right to bail).

3. They are being used solely to raise more revenue for the courts, which contradicts stated case law regarding forfeiture proceedings. As stated in State v. Dillard, 361 N.J.Super. 184 (App.Div. 2003):

“The aim is not to produce revenue for the county or state, but to facilitate a viable bail system fair to all concerned. 361 N.J.Super. at p. 188.

And again, as noted in State v. Harmon, 361 N.J.Super. 250 (App.Div. 2003):

“We also add the focus of the bail forfeiture procedure is the vindication of the public interest and should not, therefore, be viewed as primarily a revenue-raising technique for the public fisc.” 361 N.J.Super. at p. 254-255.

4. They violate N.J.S.A. 2A:162-8, which gives a surety 4 years to seek remission from a bail forfeiture.

5. Rule 3:26-6 provides judgment is entered 75 days after notice of forfeiture is mailed to the surety; this is to satisfy basic due process rights. It is common practice for it to take weeks, and sometimes months, before a notice of forfeiture is mailed to the surety after a bench warrant is issued. Yet the remission guidelines start counting the day after a bench warrant is issued. This violates a surety's due process rights and the holding in State v. Hawkins, 382 N.J.Sup. 67 (App.Div. 2005).

6. The guidelines start at 1% after a nonappearance. There are times when defendants appear in court within a very short period of time after a nonappearance (sometimes just days), the warrant is vacated but bail is not reinstated. Many times a defendant's nonappearance was excusable, or for a legitimate reason. Often a surety will produce a defendant within days of a forfeiture, or a defendant is incarcerated in another facility at the time of the court appearance. Courts should have the discretion to order “zero” forfeiture.

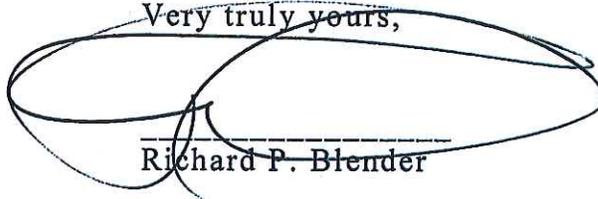
7. Our courts have emphasized that when considering the amount of forfeiture, Judges should be mindful of indemnitors; that is, sureties will seek to recoup their loss from indemnitors. This should remain a factor to considered to minimize forfeitures.

8. The entire section regarding stays is, at best, confusing and ambiguous, and violates sureties rights to due process. If a surety files a timely motion to vacate a forfeiture, to seek additional time to surrender a defendant or objecting to the entry of judgment, those motions may not be heard for several months. Bail forfeiture motions are listed only once/month in every County; they are routinely adjourned for a variety of reasons, including the Judge is occupied with more important matters. Judgments should not be entered until these motions are heard and decided, and getting stays should not be required.

9. Limiting stays to 1-30 day period is not only unreasonable but offensive to all parties involved; surety attorneys, County Counsels and the Judges assigned to hear these matters. The requirement that stays be signed by Judges to avoid preclusion is cumbersome and time-consuming. Judges and County Counsels have much more important matters than these. And having hearings on the underlying motions within that time is almost impossible. There is a variety of reasons why stays should be granted. The entry of stays should be left to the discretion of the Judge handling these cases.

10. The main complaint I hear regarding the present guidelines is that there is too much latitude; the time periods are too long (i.e. 0-6 months) and the percentages disparities too great (in some cases between 20-80%). I have not created my own schedule, but am confident, if given the opportunity, one can be without much difficulty that is fair to all parties, provided all parties (including sureties) are allowed to participate in that discussion.

Very truly yours,

A large, loopy handwritten signature in black ink, appearing to be 'Richard P. Blender', is written over a horizontal line. The signature is highly stylized and overlaps the line.

Richard P. Blender

RPB/ab