

NOTICE TO THE BAR

Directive #13-04 - Revisions to Forms and Procedures Governing Bail and Bail Forfeitures

[Directive # 13-04](#)

Supersedes Directive # 13-03 and Memorandum to Assignment Judges dated 12/18/00

To: ASSIGNMENT JUDGES

From: PHILIP S. CARCHMAN

Subj: REVISION TO FORMS AND PROCEDURES GOVERNING BAIL AND BAIL FORFEITURES

Date: NOVEMBER 17, 2004

As a result of certain legislative changes as well as recent amendments to Rules 1:13-3, 3:26-6, 7:4-3 and 7:4-5, this Directive promulgates changes to various documents and procedures related to bail processing and bail forfeitures and judgments. The changes are being made on the recommendation of the Conference of Criminal Presiding Judges, the Conference of Presiding Judges, Municipal Courts and the Bail Forfeiture Judges.

[This Directive](#) supersedes both Directive # 13-03, issued December 17, 2003, and the December 18, 2000 Memorandum to Assignment Judges on this subject. The documents and procedures covered by this Directive are the following:

- (1) New Jersey Judiciary Bail Recognizance Form and Instructions (Superior and Municipal Courts)
- (2) Joined Warrant and Order for Forfeiture (Superior Court)
- (3) Judiciary Corporate Surety Bail Forfeiture and Judgment Protocol (Superior Court)
- (4) Default Judgment on Forfeited Recognizance Form (Superior and Municipal Courts)
- (5) Consent Order (Superior Court)
- (6) Remittitur Guidelines (Superior and Municipal Courts)

Background

On November 1, 2000 the Supreme Court entered an Order, effective January 1, 2001, relaxing Rules 1:13-3, 3:26-6(a) and 7:4-5. The Order set forth notice requirements to corporate surety companies, licensed insurance producers and limited insurance representatives when a court ordered that bail is forfeited, or the court entered a judgment of default that could preclude a corporate surety company's licensed insurance producers and limited insurance representatives from writing bail in the Superior and Municipal Courts. The Order required notice to corporate sureties that failure to satisfy a judgment would result in the removal of the names of all the corporate surety company's, licensed insurance producers and limited insurance representatives from the Bail Registry until such time as the judgment was satisfied.

On June 11, 2002, the Supreme Court issued another relaxation Order modifying Rules 1:13-3(e), 3:26-6(a) and 7:4-5. The Order modified the time permitted to file an objection to set aside a forfeiture from 45 to 75 days.

On May 20, 2003, the Supreme Court issued an Order amending the Court's prior Orders to conform to statutory terminology changes effected by the New Jersey Insurance Producer Licensing Act of 2001 (L. 2001, c. 210). The Court also issued an amendment to R. 1:13-3(d) as part of that order.

In June 2003 the Appellate Division decided three cases, *State v. Harmon*, 361 N.J. Super. 250 (App. Div. 2003), *State v. Dillard*, 361 N.J. Super. 184 (App. Div. 2003), and *State v. Clayton*, 361 N.J. Super. 388 (App. Div. 2003),

setting parameters for remissions in certain instances.

On January 2, 2004, Governor McGreevey signed A-3012 into law as L. 2003, c. 202. The new law was effective immediately. It requires that a surety company register with the Clerk of the Superior Court the name and address of each bail agent or agency authorized by it to write bail, as well as the identity of any bail agent or agency providing a guarantee to the surety company for the satisfaction of any forfeited bail or bail judgments. The new law defines “bail agent or agency” as any person or entity that solicits, negotiates or sells bail bonds, or is affiliated in any manner with the execution of bail and is licensed as a limited lines insurance producer pursuant to L. 2001, c. 210 (N.J.S.A. 17:22A-26 et seq.), an insurance producer, or a limited insurance representative. The surety company is required to provide written notice to the Superior Court Clerk when its relationship with a bail agent or agency has been terminated or the bail agent or agency is no longer authorized by the surety company to write bail. The surety company’s registration must include a certification from each listed bail agent or agency stating that the information provided is true and accurate. The law further requires surety companies and bail agents to provide any additional information required by the New Jersey Rules of Court.

A bail agent or agency that fails to provide full, accurate and truthful information to the Clerk of the Superior Court as required under the law or fails to satisfy a judgment(s) for forfeited bail is subject to sanctions pursuant to N.J.S.A. 17:31-11.

In instances where a surety company, bail agent or agency files an appeal from a judgment or order enforcing the forfeiture of a bail bond, the law requires the surety company to deposit the full amount of the judgment or order in cash by certified, cashiers or bank check with the Clerk of the Superior Court or Supreme Court, as appropriate in accordance with N.J.S.A. 17:31-12. The law allows the posting of a supersedeas bond only on a showing of good cause, which shall not include an application by the surety to extend the time to forfeit the bond, to stay payment of a default judgment for forfeiture, or to extend the time to locate a defendant. See N.J.S.A. 17:31-12.

The law specifically provides that nothing in the law is to be construed to limit the authority of the Supreme Court to adopt rules or issue directives or procedures to preclude a surety company, or its bail agents or agencies from negotiating, soliciting or selling bail bonds on behalf of any defendant charged with a criminal or quasi-criminal offense pending in the Superior Court or Municipal Court. See N.J.S.A. 17:31-14.

The Supreme Court Civil Practice Committee, in its 2002-2004 report, recommended a revision to R. 1:13-3 and R. 2:9-6 to address the provisions of this new law. The Criminal Practice Committee, in its biennial report, recommended amendments to R. 3:26-6 to conform the rules to the Supreme Court Orders dated November 1, 2000, June 11, 2002 and May 20, 2003. The rule amendments also reflect the changes to statutory terminology made by the New Jersey Insurance Producers Licensing Act of 2001 and L. 2003, c. 202 and provide for notice to sureties consistent with the changes being made to R. 1:13-3. Similarly the Municipal Court Practice Committee, in its 2002-2004 report, recommended amendments to R. 7:4-3 and R. 7:4-5 to also conform to the Supreme Court Orders. The various rule amendments were adopted by the Supreme Court on July 28, 2004 and became effective September 1, 2004.

Amended Forms and Processes

The statutory and rule amendments necessitate that the following forms and procedures be modified. Further, the language on each form has been conformed to ensure that terms are used consistently.

1. New Jersey Judiciary Bail Recognizance Form and Instructions (Superior and Municipal Courts) - Attachment A

The following is a summary of the major changes to the Bail Recognizance Form. In order to exhaust supplies of the existing form, the old form may be used until February 28, 2005. The new version must, however, be used on and after March 1, 2005.

(a) The Front of the Recognizance.

The front page of the recognizance form has been reorganized. As part of this reorganization, and in response to terminology used in the New Jersey Insurance Producers Licensing Act of 2001 and L. 2003, c. 202, some words have been deleted or added. The following are the most significant changes on the front page. First, the form is no longer labeled as “confidential”. If a completed recognizance form is disseminated outside the Judiciary, the defendant’s social security number, which is and must remain confidential, will need to be redacted. That has been included in the instructions in Attachment A. Second, while the existing form has spaces to record information regarding a second surety, the new form requires that information regarding a second surety be placed on a separate recognizance form. Third, the old form has sections (on the bottom of the front page) entitled “Ownership for Cash Bail Deposited” and “Affidavit of Ownership for Cash Bail Deposited by Someone Other than the Defendant.” These two sections have been combined and reworded and the requirement for an affidavit has been replaced with a certification.

(b)The Back of the Recognizance.

There are two major revisions to the back page of the recognizance. First, the form now provides for the responsibilities of the defendant and sureties in distinct sections. This required some minor rewording. These changes are intended to make it easier for the defendant and the surety to know what their respective obligations are under the recognizance. Second, three responsibilities of corporate sureties have been added. See section 2, subsections (a), (b) and (c). These were added because they were factors stressed by the Appellate Division in the three June 2003 cases regarding determination of the amount to be remitted to a surety. See *State v. Harmon*, 361 N.J. Super 250 (App. Div. 2003), *State v. Dillard*, 361 N.J. Super. 184 (App. Div. 2003), and *State v. Clayton*, 361 N.J. Super. 388 (App. Div. 2003).

2. Joined Warrant and Order for Forfeiture (Superior Court) - Attachment B

No changes have been made to this form.

3. Judiciary Corporate Surety Bail Forfeiture and Judgment Protocol (Superior Court) – Attachment C The changes in this document are needed to comply with the new legislation.

4. Default Judgment on Forfeited Recognizance Forms (Superior and Municipal Courts) – Attachment D The changes in these documents are needed to comply with the new legislation.

5. Consent Order (Superior Court) – Attachment E The changes in this document are needed to comply with the new legislation.

6. Remittitur Guidelines – Attachment F No changes have been made to these guidelines.