

RULE TWENTY-FIVE (25) PROFESSIONAL BONDSMEN

25.01. Petitions.

A. Petitions for approval of a bonding company or its agents shall be on a form consistent with that provided by the Circuit Court Clerk of Franklin County. All petitions for approval of a bonding company and/or an agent thereof must be filed in the Office of the Circuit Court Clerk of Franklin County regardless of which county or counties of the Twelfth Judicial District approval is sought.

B. Petitions for approval of a bonding company or of an agent thereof shall be heard by the Circuit Court Judges of the 12th Judicial District of Tennessee sitting en banc.

25.02. Collateral.

A. Effective January 1, 2001, all applicants seeking to open a professional bail bond company in the 12th Judicial District are required to post a minimum of Ten Thousand Dollars (\$10,000.00) in cash with the Circuit Court Clerk of Franklin County as security for bail bonds written. No real or other personal property collateral will be approved by the Court. An approved Bonding Company may post additional cash collateral in increments of One Thousand Dollars (\$1,000.00) with the Circuit Court Clerk of Franklin County at any time.

1. This collateral may be in the form of one or more Certificates of Deposit issued by a federally insured financial institution chosen by the Circuit Court Clerk of Franklin County. Such Certificate of Deposit shall be issued to the Franklin County Circuit Court Clerk as Trustee for the bonding company, and shall require either the signature of both the Clerk and the owner of the company, or a Court Order, before being withdrawn.

2. A Certificate of Deposit shall not exceed a face value of Ten Thousand Dollars (\$10,000.00), and its term shall be for a period of time not to exceed one year. Any interest accruing on the Certificate of Deposit will not be considered as additional collateral and shall be paid by the financial institution to the bonding company upon maturity of the Certificate. Any notices or statements issued by the financial institution shall be mailed to both the Franklin County Circuit Court Clerk and the bonding company.

B. All companies previously qualified must requalify under the provisions of these rules on or before April 1, 2001.

C. Any bonding company sold or transferred to another person for any reason must meet all guidelines and requirements in effect at the time of court approval as if for a new company, unless otherwise ordered by the Court for good and sufficient cause. The Court must approve all transfers and/or sales before any liability of the previous owner is released by the Court.

25.03. Limits.

A. Any company approved by the Court may write bonds in the Courts of the 12th Judicial District so long as its outstanding bonds in the Circuit Courts do not exceed ten (10) times the amount of the cash collateral posted with the Franklin County Circuit Court Clerk.

A bonding company may be allowed to write any one bond for any one person in an amount equal to one half (50%) of the total collateral posted.

B. The Circuit Court Clerk of each County shall keep a file in each county for each bonding company. The respective Clerks shall make copies of all bonds in duplicate and shall file one in the bond file and one to the individual case file.

C. The District Attorney General shall review all bonding companies' outstanding bonds, forfeitures, and final judgments on a monthly basis. The District Attorney General shall notify the Circuit Court Judges, the Sessions Court Judges, the Clerks' offices, and the jails of those bonding companies that have exceeded their allowed limits or have uncollected final forfeitures. A bonding company exceeding its total allowable bond limit shall be removed from the list of approved bonding companies. A company exceeding its limits shall not be allowed to write any bail bonds until the outstanding bonds are within the company's allowable limits.

25.04. Forfeitures and Petitions for Relief or Exoneration from a Forfeiture.

A. The Circuit Court Clerk of each County shall notify each bonding company of every forfeiture for which that company is responsible. Notices of forfeitures, or Scire Facias, shall be made available for each company to pick up on a weekly basis.

The bonding company shall pick up all Notices each week and shall sign and date a duplicate copy indicating date of receipt. The bonding company's failure to pick up Notices shall be a waiver of any objection and shall be deemed notice for all purposes under this rule.

B. The clerk shall file all conditional and final forfeitures in a separate bond forfeiture docket book. Upon conditional forfeiture, the clerk shall docket the case for a final forfeiture hearing not less than one hundred eighty (180) days nor more than two hundred ten (210) days after entry of the conditional forfeiture.

Bonding companies will be allowed total forfeitures in the 12" Judicial District Sessions Courts and Circuit Courts, combined, in an amount equal to the amount of collateral posted.

Bonding companies that are within their forfeiture limit will be allowed 180 days beginning when the forfeiture was taken, within which to surrender the defendant to the court, before a Final Judgment will be issued requiring the bonding company to pay the amount of forfeiture.

C. Bonding companies that have exceeded their forfeiture limit at the time of the monthly review by the District Attorney General shall be removed from the list of approved companies and shall not be allowed to write any bail bonds until the forfeitures are again within the company's allowable limits. A company has exceeded its limit when the total amount of forfeitures in the Sessions Courts and/or Circuit Courts in the 12' Judicial District exceed the amount of collateral posted with the Franklin County Circuit Court Clerk.

D. A bondsman may file a Petition for Relief or Exoneration From a Forfeiture either when a surrender has been made pursuant to 25.05 of this Rule, or when the defendant has been returned by capias or other process to the custody of the Sheriff of the county where the charge is pending upon which the bond was written. The following procedures shall be followed when filing a Petition for Relief or Exoneration from a Forfeiture:

I. The bondsman shall pay the appropriate filing fee and file the Petition (Form 7) in the county where the charge is pending upon which the bail bond was written.

2. The bondsman shall serve a copy of the Petition on the District Attorney General's office either personally at least five (5) days before the hearing or by mail post-marked at least seven (7) days before the hearing.

3. The Petition may be set for a hearing by the Circuit Court Clerk on the next available plea or assignment or bound over day in the county where the petition is filed, or upon any other day, with the consent of the circuit judge who hears the petition.

E. The District Attorney General, or one of his assistants, shall attend the hearing and address the issues raised in the Petition. At the hearing on the Petition for Relief or Exoneration from a Forfeiture, the Court shall determine what relief the bondsman is entitled.

F. In the event of a final forfeiture, upon the surrender of the defendant as a direct result of the bondsman's efforts, and for a period of time not to exceed two years from the date of forfeiture, the bondsman may file a Petition with the Court requesting a refund of the payment previously made to the Court. Any refund / credit, and the amount of same, shall be in the sole discretion of the Court after a hearing. In no event will court costs paid by a bondsman pursuant to a final forfeiture be refunded by the Clerk.

25.05. Surrenders and Petitions to Approve a Surrender.

A. A bondsman attempting to surrender a principal must comply with T.C.A. 40-11-137, and must surrender the principal for each and every charge for which the bonding company has written a bail bond.

The following procedures shall be followed for the surrender of a defendant when no *capias* has been issued for the defendant's arrest:

- a) During normal business hours the bondsman shall obtain a certified copy of the original bond from the Circuit Court Clerk's office and complete the Notice (Form 8), informing the defendant of the right to a surrender hearing.
- b) The bondsman shall provide a copy of the Notice to the defendant who shall be given the opportunity to sign the Notice acknowledging its receipt. In the event a defendant refuses to sign the Notice, the Sheriff or his/her representative shall sign the Notice as a witness noting that the Notice was given to the surrendered defendant.
- c) The defendant may then be surrendered to the custody of the Sheriff or his representative who shall sign the certified bond and then return the signed certified bond to the surrendering bondsman.
- d) Upon surrendering defendant to the Sheriff's custody the bondsman shall pay the appropriate filing fee and immediately file a Request to Approve Surrender (Form 9) and the original of the Notice signed by the defendant or the sheriff or his representative with the Circuit Court Clerk of the county where the charge is pending upon which the bail bond was written.
- e) The bondsman shall immediately personally serve a copy of the Petition and Notice on the District Attorney General's office.
- f) The hearing date shall be set by the Circuit Court Clerk as soon as practicable and within seventy-two (72) hours of the surrender.
- g) If the bondsman also intends to request relief or exoneration from a forfeiture pursuant to 24.04(D) of this Rule when a defendant is surrendered, then he may join the requests in a joint petition (Form 10).

B. The District Attorney General, or one of his assistants, shall attend the hearing and address the issues raised in the Petition. At the hearing the Court shall determine whether the surrender was for good cause. If the Court finds that the surrender was for good cause, the Court shall approve the surrender. If the Court finds that the surrender was not for good cause, it may order the defendant released upon the same undertaking, and/or impose any other conditions within its discretion as provided by law. If the Court accepts a surrender, the bondsman may request relief or exoneration from a forfeiture as provided in 24.05 of this Rule.

25.06. Final Judgments.

A. Any final forfeiture judgment must be paid within thirty (30) days of the date of judgment. A company having an unpaid final forfeiture judgment at the end of thirty (30) days shall be removed from the approved list and not allowed to write bail bonds in the 12th Judicial District until the judgment is paid and/or the Bonding Company is reinstated by Court Order.

B. The District Attorney General or his assistant shall mail a copy of each final forfeiture judgment to the Franklin County Circuit Court within five (5) days of the execution of said order.

C. If a bonding company fails or refuses to pay a Final Forfeiture Judgment within the allowed thirty (30) days, an order shall be entered requiring an amount necessary to satisfy the judgment to be deducted from that company's collateral.

1. If the Franklin County Circuit Court is ordered to deduct the amount of judgment from the collateral, the bonding company must file a Petition with the Court requesting to be reinstated. The company must post with the Franklin County Circuit Court Clerk such collateral as is then required as a minimum for a new company under the local rules before being reinstated as an approved company.
2. The Franklin County Circuit Court Clerk must keep any remaining collateral until the bonding company has no outstanding bonds or forfeitures in the 12th Judicial District. When the company has no further liabilities with any Court, the District Attorney General shall notify the company by certified mail of the amount of funds remaining and of the company's right to a return of such funds. If, after one hundred eighty (180) days, the company has not requested in writing a return of the balance of funds remaining on deposit, said funds shall be considered abandoned and shall become the property of the Clerk of the County of forfeiture.
3. In the event that the collateral on deposit with the Franklin County Circuit Court Clerk is insufficient to satisfy a judgment, the Clerk shall proceed with other legal means of collection in order to fully satisfy the judgment. This may include attaching other property of the bonding company, its trustee, and/or its owner.
4. The Clerk shall first apply payments of a final forfeiture to any costs incurred, including but not limited to reasonable attorneys' fees and publication expenses. Thereafter, the Clerk shall apply the payment to court costs and then to the final judgment.

25.07. Company Changes.

A. Any changes to a bonding company's address and/or telephone number from that noted in the original petition must be made in writing and filed with the Franklin County Circuit Court Clerk who shall send certified copies to the other Circuit Court Clerks of the 12th Judicial District.

Until the bonding company notifies the Clerk of a change, the telephone number, etc., on file with the Clerk will be the information provided to and by the local jails within the 12th Judicial District.

B. Requests for changes to a bonding company's name, ownership, or agent(s) must be submitted to and approved by the Court in writing, before any change becomes effective.

Changes to a bonding company's name, ownership, or agents, shall be heard by the Circuit Court Judges sitting en banc.

1. Requests for ownership changes or the addition of an agent shall be filed with the Circuit Court Clerk no later than four o'clock (4:00) p.m. two weeks prior to the hearing.
2. Requests to delete an agent must be in writing and may be presented to the Court for its approval at any time by the Circuit Court Clerk.

25.08. Correspondence.

A. All correspondence from the Circuit Court Clerk's office will be mailed to the bonding company and/or agent at the address last on record in the Clerk's office.

B. In the Circuit Court Clerk's discretion, copies of monthly reports detailing a company's outstanding bonds and forfeitures in Sessions Court and Circuit Court may be made available to the companies at the Circuit Court Clerk's Office in lieu of mailing same.

25.09. Receipts.

Every bondsman and/or agent must use at least duplicate carboned receipts to record all payments made by or on behalf of a defendant. A copy of the receipt must be given to the defendant. Receipts shall include:

1. A specified description of all property, including cash or checks, received from the defendant or someone acting on defendant's behalf, and
 2. The signature of the defendant or someone acting on his/her behalf, and
 3. The balance, if any, due and the terms of paying such balance.
- 25.10. Business License. Each bonding company must have a valid and current business license. A copy of the license and receipt of payment for same must be filed with the Franklin County Circuit Court Clerk on an annual basis each January 15.

25.11. Complaints Against Bonding Companies.

A. Any person may file a complaint against a bonding company and/or its agent.

1. Complaints must be in writing, must be legible, and include:
 - a. The printed name of the person making the complaint; and
 - b. The printed full address and telephone number of the person making the complaint, and
 - c. The printed name of the defendant and the docket number involved, and
 - d. The name and address of the bonding company and agent involved; and
 - e. A summary of the circumstances or action being complained of, including when and where the alleged action took place; and
 - f. The signature of the person making the complaint.

2. Upon receipt of any written complaint the Circuit Court Clerk shall

- a. First forward a copy of the complaint to the bonding company requesting a written response within ten (10) days; and
- b. After ten (10) days, provide a copy of the complaint and the response, if any, to the Court.
- c. The Clerk will then notify all parties in writing of the date and time scheduled for a hearing.

B. Upon a hearing of all parties present, the Court shall make a finding of fact as to whether or not the allegations contained in the complaint violate any rules of the Circuit or Sessions Courts, and whether or not the allegations support any ethical violations. The Court may in its sole discretion make any finding and order it deems necessary, including;

1. A referral to the District Attorney's office for any allegations that may rise to the level of a criminal offense; or
2. The suspension or termination of the bonding company's approval to do business; or
3. The refund of any premium paid or a portion thereof; or
4. The setting of any conditions the Court feels necessary.

25.12. Continuing Education.

Every bail bondsman and bonding agent shall comply with the continuing education mandates of T.C.A. 40-11-401, et seq. Failure to complete the required course work and file proof with the Clerk by December 15 of each year shall disqualify said bondsman / bonding agent from making further bonds.

25.13. Clerk Fees.

A. There shall be a filing fee, payable in advance, of \$15.00 for the filing of any document except the Semi-Annual Reports and proof of continuing education. Any document includes but is not limited to the following:

1. Any change in a company's name, address, telephone number;
2. The addition or deletion of any agent;
3. A response to any complaint; or
4. The notification of an arrest of a bonding company agent.

B. There shall be a \$6.00 fee, payable in advance, for the surrender of any defendant, including those done in open court. In the event of multiple charges or cases for one defendant, the fee must be paid for each charge or case for which the surrendering bonding company has liability. No order exonerating a bondsman shall be filed unless accompanied by payment of all costs arising from the defendant's failure to appear.

25.14. Miscellaneous.

A. It shall be the responsibility of the bonding company that all bonds shall be fully completed. Bail bonds shall:

1. Have the name, address and zip code number of the defendant legibly printed thereon;
2. Be signed by the agent making said bond; and
3. Have the name of the bonding company boldly and legibly stamped or printed thereon.

B. A bonding company, or its agent, must be given a copy of each bail bond at the time the bonding company, or its agent, accepts responsibility for the defendant. The bonding company must retain a copy of each bail bond for which it is liable.

C. Any bonding company authorized by the Circuit Court Judges shall file with the Circuit Court Clerk a semi-annual financial report pursuant to T.C.A. 40-11-303.

Upon the failure of any company to file this report, or any other record or document required by statute or local rules, the District Attorney General shall notify the Circuit and Sessions Court Judges and Clerks who shall remove the company from the approved list. In such event, the company shall not be allowed to write any bonds until such time as all requirements are met.

D. All persons having financial or managerial interests in a bonding company must be revealed on the initial petition and on the semiannual report.

There is no prohibition against one person or entity owning, having any ownership or financial or managerial interest more than one bonding company if:

1. Such interest is revealed to the Court, and
2. Each company is qualified with its own deposited security and the corresponding limits, and
3. Each company has its own business license and telephone number, and
4. Each company has its own separate agents who write bonds only for that one company.

E. There is no prohibition against a person or entity owning a bonding company from also owning or having an interest in any other business. Such other interest must be revealed to the Court at the time of the original petition and on the semiannual reports.

The Court may, in its discretion, impose any limits or conditions it feels necessary to ensure the professional standing or appearance of the bonding company, including, but not limited to, dress of bondsmen in the courtroom and signs and advertisements in close proximity to the courthouse.

Such measures, if any, shall be in the public interest to avoid a conflict of interest or an appearance of impropriety on the part of the bonding company.

F. An agent may be qualified for, and write bonds for, only one bonding company.

An owner of more than one bonding company may be approved by the Court as an agent for each company under his/her ownership, thereby being qualified to write bonds for each company owner.

G. Pursuant to T.C.A. 40-11-125 and 40-11-126, the Court may take appropriate disciplinary action including the withholding, suspension, or termination of approval to do business if it appears to the Court that a bondsman:

1. Has been guilty of violating any of the laws of the State of Tennessee relating to bail bonds; or
2. Has been arrested and convicted for violating any of the laws of any state; or
3. Has a final judgment of forfeiture entered against him/her that remains unsatisfied; or
4. Has failed to comply with any local rules; or
5. Fails to satisfy any court order or judgment; or
6. Is guilty of unprofessional conduct that includes but is not limited to:
 - a. Loitering about any jail or court premises for the purpose of soliciting business;
 - b. Suggesting or advising the employment of, or otherwise making referrals to, any particular attorney to represent the defendant;
 - c. Paying a fee or giving or promising anything of value to any attorney, to acquire a bond, or receiving a fee or anything of value from any attorney;
 - d. Paying a fee or giving or promising anything of value to any clerk of court, jailer, police officer, peace officer, committing magistrate or any other person who has power to arrest or hold in custody, or to any public official or public employee to secure a bond and/or a settlement, compromise, remission or reduction of the amount of any bail bond or the forfeiture thereof;
 - e. Paying a fee or rebate or giving anything of value to an attorney in bail bond matters, except in the defense of any action on a bond;
 - f. Participating in the capacity of an attorney at a trial or hearing of one on whose bond he/she is surety;
 - g. Surrendering a principal or asking any court to be relieved from a bail bond arbitrarily, or without good cause;
 - h. Accepting anything or value from a principal except the premium; however, the bondsman shall be allowed to accept collateral security or other indemnity from the principal with the provision that such shall be returned upon final termination of liability on the bond. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond. When a bail bondsman accepts collateral, he/she shall give a written receipt for same, and this receipt shall given in detail a full description of the collateral received and the terms of redemption;
 - i. Making or posting a bail bond for himself/herself, or for another agent of the same bonding company.

H. It shall be the responsibility of any bonding company and/or bonding company owner to immediately notify the Court, in writing, of any misdemeanor and/or felony arrest of any of its agents, including an owner/agent. Failure to do so may result in any disciplinary action against the agent and/or company the Court, in its sole discretion, find necessary.

I. It shall be the responsibility of the bonding company to have its agent in attendance on all plea and assign and bound over days.

25.15. Enforcement.

In the event that legal action is necessary to enforce any rules or to collect any judgment, the owner of a bonding company shall pay any attorney fees, court costs, and other costs incident thereto.